114-660

VOL. 3.

# TRANSCRIPT OF RECORD.

~~181~~ 164

CALVIN AMORY STEVENS AND JOHN T. TERRY,

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

**FILED NOVEMBER 16th, 1881.**

# United States Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[In Equity.]

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CALVIN AMORY STEVENS, on behalf of the holder of Internal Improvement Bonds issued to the Mississippi and TENNESSEE RAILROAD COMPANY,

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY et al.

To the Honorable the Judges of the Circuit Court of the United States, for the Sixth Judicial Circuit and Western District of Tennessee:

The petition of John T. Terry, respectfully shows to your Honors:

That your petitioner is an owner and holder of Internal Improvement Bonds of Tennessee, issued on account of the Mississippi and Tennessee Railroad

Company, for the construction and equipment of its said road.

Your petitioner's said bonds are identified and numbered according to the description in the bill in the above suit, and have the like number of overdue and unpaid coupons attached thereto. The schedule hereto attached and prayed to be taken as a part of this petition exhibits his ownership and holdings of said bonds.

Your petitioner is likewise a member of the Committee of Tennessee Bondholders, representing eight owners and holders of Internal Improvement Bonds of Tennessee, issued to the Mississippi and Tennessee Railroad Company, owning and holding sixteen bonds issued to the said company by the State of Tennessee.

Your petitioner desires to unite in the prosecution of the bill herein, and to be joined as co-complainant according to the frame of the suit and the course and practice of this Court, with leave to amend the title and formal allegations of the bill to conform to this petition. A copy of said amendment is hereto attached.

And your petitioner accordingly prays for the foregoing relief and such other order as may be appropriate in the premises.

EDWARD L. ANDREWS,
Solicitor and of Counsel
for Petitioners.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.:

On the 19th day of April, 1880, before me personally appear John T. Terry, who being duly sworn, says, that the matters and things stated in the foregoing petition are true so far as the same are

stated of his own knowledge, and so far as stated on 9
information and belief he believes them to true.

JNO. T. TERRY.

Subscribed and sworn to before me, this 19th day of April, 1880.

EDWARD A. CRAMER,
Notary Public,
N. Y. Co.

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## Order.

On the foregoing verified petition and on motion of Edward L. Andrews, solicitor for complainants.

It is ordered that John T. Terry, be, and he is 11
hereby admitted as co-complainant in the above suit, and the formal amendments attached to the said petition are hereby allowed.

We hereby consent to the entry of the above order.

WRIGHT, FOLKES & WRIGHT,
Solicitors for Defendant.

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## Amendments in above Case to Bill.

On page 17 after the word "Tennessee," on the 25th line, 14 lines from the bottom of the page, insert:

"Your orator, John T. Terry, is the owner and holder of three of said bonds, which are like description with those of your Orator Stevens above set forth."

On the first line of the next paragraph after the above amendment and after the word "orators," insert "Stevens and Terry," and after the word "likewise" on the same line, insert the word "respectively." After the word "bonds" on the second line of the same paragraph, insert the words "alleged to belong to them respectively."

On the 17th page, 25th line, 14 lines from the bottom of the page after the word "Tennessee," insert the following: "The said bonds are numbered and identified respectively as follows: One belonging to John T. Terry, numbered 752, is a green bond, series B, two belonging to said Terry, numbered 1,959 and 5,116 are green bonds.

At the end of the word "orator," wherever it occurs in the bill, add the letter "S," and after the name "Stevens," add the name "John T. Terry."

Make the pronoun and verb to which the word "orators" relates plural instead of the singular number.

Schedule of bonds issued by the State of Tennessee to the Mississippi and Tennessee Railroad Company, and owned and held by John T. Terry:

| No. | Color. | Series. |
|---|---|---|
| 752 | Green. | B. |
| 1959. | " | |
| 5116. | " | |

UNITED STATES OF AMERICA,

WESTERN DIVISION OF THE WESTERN DISTRICT OF TENNESSEE.

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In the Circuit Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said Court, at a Regular Term thereof, begun and held for its November Term; A. D 1879, at the United States Court-House, in the City of Memphis, in said District, on to-wit: the 24th day of April A. D. 1880, in the following cause, to-wit:

| | |
|---|---|
| CALVIN AMORY STEVENS, Plaintiff, *vs.* THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY, Defendant. | *No.* 318. *Equity.* |

It appearing on petition and motion to the satisfaction of the Court, that Joseph W. Caldwell, Henry T. Lemmon, William T. Avery, G. W. Macrae and C. L. Vance

are all citizens of Tennessee, and that they are and each of them proper parties to this cause, and they having in due form made application to be made such parties defendant, and such application not being resisted by Complainant, but he conceding that they are proper parties to this cause, and expressly consenting and agreeing that they may be made such parties defendants. It is therefore ordered, adjudged and decreed that the said Joseph W. Caldwell, Henry T. Lemmon, William T. Avery, G. W. Macrae and C. F Vance, and each of them be made parties defendant to this cause—and the proof heretofore taken herein need not be retaken as to them, and may be used by or against them as though they were parties when the same was taken. It is also ordered by consent of parties that the said answer filed herein, stand as if Complainants had filed their formal replication thereto and join issues thereon with the effect of such replication regularly filed thereto.

# U. S. Circuit Court,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of the Internal Improvement Bonds of the State of Tennessee, issued to the MISSISSIPPI and TENNESSEE RAILROAD COMPANY

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

The joint and separate answer of Joseph W. Caldwell, Henry T. Lemon, G. W. Macrae and C. F. Vance, all citizens of Tennessee, on their own behalf, and also on behalf of all others in like interest who are holders and owners of the bonds issued on the 30th day of July, 1877, by said Mississippi and Tennessee Railroad Company, and secured by a mortgage or deed in trust to the Central Trust Company of New York, of same date, upon the property and so forth of said company as hereinafter set forth. These respondents having been, by order of this Honorable Court, made parties defendant to the bill of complaint filed herein, enter their appearance thereto, and for answer to said bill,

5 or to so much as they are advised it is material for them to answer, but saving and reserving all right or benefit of exception thereto that may be taken on account of the errors and omissions therein, answering, say they admit that their co-defendant the Mississippi and Tennessee Railroad Company is a body politic and corporate; that it was chartered in due form of law by an act of the Legislature of the State of Tennessee passed December 5th, 1853. That it was also incorporated by an act of
6 the Legislature of the State of Mississippi passed October 16th, 1852. That the purpose and object of such incorporation by said acts was the construction and completion, and thereafter the operation and management of a line of railway for the transportation of passengers and freight from the said City of Memphis, in the said State of Tennessee to Grenada, in said State of Mississippi; that for this purpose such powers were granted to it as are declared in its several charters
7 and acts of incorporation; that it was authorized and empowered to borrow money for the purposes of the enterprise, and that it was also authorized to impose liens and execute mortgages upon its property to provide for and ensure the payment of its liabilities. Respondents having read and being informed as to the matters and things contained in the answer of the said co-defendant the Mississippi and Tennessee Railroad Co., filed herein, hereby adopt the same and all things therein contained and
8 alleged as fully as though the same were here repeated and set forth, and hereby affirm and declare the same to be true, in substance and in fact, according to their knowledge, information and belief, and rely upon the same as a complete and perfect answer to said bill.

Respondents, for further answer, say that they are the owners and holders of bonds issued by said

Mississippi and Tennessee Railroad Company, on 9
the 30th day of July, 1877, and which are known as consolidated mortgage bonds, and are secured by a mortgage or deed in trust, of even date therewith, executed by the said railroad company to the New York Central Trust Company, as trustees, upon all its property and franchises, a copy of which is herewith filed, marked Exhibit No. 1. Said respondent, Joseph W. Caldwell, shows that he is the owner and holder of 5 of series A. of said bonds, and became such owner and holder about 10
Oct. 2, 1877.

Respondent Henry T. Lemon shows that he is the owner and holder of 2 of series A. of said bonds and 4 of series B. of bonds; that he became such owner by purchase, on or about the 9th day of October, A.D. 1877.

Respondent G. W. Macrae shows that on or about the 25th day of October, 1877, he purchased and still is the owner and holder of 8 of series A of said bonds. 11

Respondents C. F. Vance shows that on or about the 10th day of January, 1878, he purchased and now owns and holds 3 of series A of said bonds. Each of respondents states that he purchased said bonds in good faith and paid full value therefor; that they and each of them purchased said bonds—and the same is true, as they are informed, believe and charge with reference to the other holders and owners of said bonds—without knowledge and in ignorance of the claim now 12
sought to be set up by complainants. And in the assurance and belief that said bonds were lawfully issued for the purposes authorized, and under the full and honest apprehension and belief that the payment by said company of said debt so due the State of Tennessee on account of the loan of her said bonds, as is more fully set forth in the answer

13 of said company, was in all respects valid and in accordance with law, and that such payment did in law, as was in fact intended, operate as a full and final payment, satisfaction and discharge of said debt, and extinguished any and all liens reserved by said State upon the property, &c., of said Company, for the purpose of security and indemnity against loss growing out of said loan; and that the said consolidated mortgage bonds so purchased by them as aforesaid was in all respects what it upon
14 its face purported to be. That is to say, that series A "of said bonds constitute a first mortgage on all of the property, franchises, &c., of said company, superior to any and all claims or incumbrances whatever, and that series "B" of said bonds were a second mortgage on the same property, &c., subordinate alone to said series A." Respondents, whilst adopting, as before stated, the answer of their co-defendant the Mississippi and Tennessee Railroad Company, desire especially
15 and generally to reiterate the allegations made in said answer, that the uniform and uninterrupted construction placed by the officials of said State in acting in her behalf in their various transactions, course of conduct and dealings with said railroad companies to which had been loaned the bonds of the said State under the said act of February 11, 1852, and the acts amendatory thereof, with reference to said loan, and their liability and duty thereunder, extending through a period of
16 more than twenty-five years, was that said lien, so created and reserved, as aforesaid, was solely for the benefit and security of said debt, unencumbered with any trust, equity or beneficial interest in favor of the State bonds so loaned said companies, and that the said bondholders had no interest direct or indirect in said lien, but by virtue of the teno :nd contract of the bond so held by them, were to look

alone to the State for payment of interest and prin- 17
cipal of the same. Respondents further show that said State, as is more particularly set forth in said answer, through various acts of her Legislature extending over more than twenty years, both impliedly and expressly claimed and asserted, that said lien was for the benefit, security and indemnity of said State, and that the latter was in no sense a trustee for the holders of her said bonds, and that they had no interest in or claim upon the property of said railroad companies covered by said lien, 18
but were to have recourse alone upon said State for the payment of their said bonds.

Respondents further show that these acts of the Legislature negatived and repudiated any right or interest of said holders of her bonds in the lien so reserved, as aforesaid, by the act of February 11th, 1852, and the acts amendatory thereof, in many and various ways, but notably :

1st. By requiring said railroad companies so re- 19
ceiving bonds under the Internal Improvement Laws of said State to pay into the Bank of Tennessee, the fiscal agent and virtually the treasury of said State, fifteen days in advance of the maturity of the interest on said bonds, an amount sufficient to pay such interest.

2d. By providing for a sinking fund to retire the debt and extinguish the lien growing out of the loan of said bonds by said State to said companies, ex- 20
pressly authorizing payments to be made to the same in any of the bonds of the State, and not in the identical bonds originally loaned by said company so paying. And fixing the payments to the same at such a rate as would have reimbursed the State before the maturity of the bonds so loaned as aforesaid.

21 3d. By expressly reserving in the original act authorizing the issuance of said bonds, the right to enact thereafter all such laws as should be deemed necessary to protect the interest of the State, and to secure the State against loss on account of the issue of bonds under the provisions of said act. And in certain contingencies therein specified to seize the roads to which bonds were loaned, appoint Receivers to operate the same and apply proceeds as therein specified, and also in certain cases therein
22 enumerated to sell said roads outright, and that in the absence of any default in said companies in providing funds to pay interest or principal.

4th. By increasing, diminishing, suspending and releasing payments by said companies to said sinking fund at the will and pleasure of the State, without reference to the wishes or supposed interest of said bondholders, by making various changes in the method of keeping the same, from that provided in
23 the original Act. And finally, by expressly providing that payments to said sinking fund should be passed directly to the credit of the company paying, and be a release to said company from that amount on the debt so due by it to the State, and thereafter requiring it only to provide a sum sufficient to pay the interest on the balance remaining due instead of upon the whole amount originally due by reason of the loan of said bonds.

24 5th. By increasing the amount of bonds which were under act of February 11th, 1852, to be issued at the rate of $8,000 per mile to $10,000 per mile, and also by authorizing an increased issue for bridge purposes to the extent of many thousands of dollars, at the same time reserving a lien upon the same property as was embraced in said Act of February 11th, 1852, to secure payment of such increased and additional issues.

6th. By issuing and loaning to nearly all the companies—said Mississippi and Tennessee Railroad Company, which were beneficiaries under the Act of February 11th, 1852, and the Acts amendatory thereof, other and additional bonds for the purpose of enabling said companies to reconstruct and rehabilitate their roads which had been largely injured and destroyed by the casualties growing out of the late civil war. Said issues and loans having been made during the years 1866-7-8 and 9, and amounting to many millions of dollars, and by the same acts which so authorized the issuance of said bonds declaring and retaining a first lien or mortgage upon the same property, franchises, &c., of said companies as was embraced and included in said acts of February 11th, 1852, and acts amendatory thereof.

7th. By authorizing and instructing certain designated officials of said States to seize the roads and other property of any of said companies which should be in default in payments on account of interest or to the sinking fund. And to inaugurate and prosecute suits in her behalf for the purpose of selling said roads and property, and when, as was in divers instances the case, said roads, &c., were sold under such proceedings, by assuming to convey a perfect and unincumbered title to the purchaser and by applying the proceeds of said sales to the use and benefit of the State, when paid in money, and when paid in the bonds of the State, by cancelling the same, totally ignoring and disregarding any supposed right or claim of the holders of these bonds, originally loaned as aforesaid, to said companies.

8th. By the terms and provisions of said Act of February 25th, 1869, And of the Act of January

5th, 1870, amendatory thereof, respondents for further answer say, upon information and belief, that during all the years through which the legislation extended, although said legislation and settlements, suits of foreclosure and sales thereunder and the other doings and proceedings aforesaid, were open, public and widely notorious, and known to the holders of the State bonds so issued and loaned to said companies, but no one of them ever directly or indirectly dissented from such legislation or from said Acts and doings thereunder; that this was the case, although said State was notoriously embarrassed financially and with few exceptions had failed to pay the interest on her bonded debt or to make any provisions for the same; and that they never at any time until the bringing of the series of suits of which this is one—in the year 1879, asserted any interest in or right to the said lien retained by said Act of February 11th, 1852, by demanding of said State that through the machinery provided by said last mentioned act or acts amendatory thereof, that said lien should be enforced by sequestration or sale, or by making demand of payment of said companies to which said bonds had been loaned as aforesaid, of the interest due thereon, nor in any other manner whatsoever.

Respondents charge, upon information and belief, that said bondholders, including complainants, although fully cognizant of what was being done with reference to said lien by said State and said companies, and that both were dealing with and disposing of the same as though it was the exclusive property of said State and although informed of the issuance of said consolidated mortgage bonds by said Mississippi and Tennessee Railroad Company and of the mortgage to secure the same, and that the said bonds were to be sold, and the proceeds so far as necessary was

to be used in paying said debt so due said State by 33
said company in account of the loan of said bonds
as is more fully set forth in the answer of said
company, and although fully aware that said bonds
were being put upon the market, and were being
negotiated and sold to innocent purchasers, who
were paying full value therefor upon the assump-
tion that they were secured as aforesaid, and that
the property of said company embraced in said
mortgage or deed in trust to said Central Trust
Company of New York, was unincumbered by any 34
lien in favor of complainants and their associates,
yet the holders of said State bonds stood by ap-
parently acquiescing in what was being done and
uttering no word of warning or dissent.

Respondents further say that said State bond-
holders have not merely confined themselves to in-
action and quiescence in the premises, but that
they have by many direct, positive and unequivocal
acts and declarations led all parties to believe that
their sole debtor was the State Tennessee, and that 35
they reposed alone upon her faith and honor.

Respondents show in this connection that under
the Act of November 23d, 1865, all of the holders
of Tennessee bonds, including complainants' or
those through whom they claim funded the interest
which had accrued and was past due on said
bonds, from the years 1861 to 1866 in new State
bonds—amounting to more than $4,500,000, and
also funded all interest due on said bonds under
act of February 24th, 1870. That they also regis- 36
tered their bonds and funded in new State bonds,
all accrued and past due interest prior to January
1st, 1874, under the act of March 17th, 1873. Res-
pondents aver, that the said holders of said State
bonds, including complainant's or those through
whom they claim were eager and active in procuring
the passage of said last named act, and promptly

funded as aforesaid their past due interest and had their bonds registered, and that fact stamped on each of said bonds by the proper State officials as provided in said act. That said act pledged the faith and credit of the State for the payment of said bonds at maturity, and for providing a sinking fund for that and for the prompt payment of interest on said bonds, as well as interest in registered bonds, commencing with the interest to fall due on the first day of July, 1874, and it was thereby made the duty of the treasurer of said State to set apart for that exclusive purpose so much of the State revenues as may be necessary to pay the interest on said bonds, commencing with the interest falling due July 1st, 1874. Respondents aver that the revenues of said State, coming into her Treasury each year since said funding and registration under said act were amply sufficient to pay the interest on said bonds, including those of complainant's, as the same matured. That complainants and the other holders of said bonds by the terms of their contract under said act, had the legal right to compel the treasurer or other proper officials of said State by mandamus or other legal process, to apply said revenues of the State to the payment of interest in said bonds as the same matured, and that by accepting the provisions of said act, they thereby received a new and amply sufficient security for the payment of the principal and interest of their said bonds. And if they ever had any lien on the property, &c., of said railroad companies (which respondents deny), under said Act of February 11th, 1852, they released and surrendered it by an acceptance of the provisions of said Act of March 17th, 1873. But should this Honorable Court be of the opinion contrary to respondents' belief, that they are mistaken in this, they submit that complainants and their associates have another security

provided by said Act. And that they will not be 41
allowed in a Court of Equity to disturb the said
property of the said Mississippi and Tennessee
Railroad Company situated in Tennessee, which is
the sole security possessed by respondents, until
they shall have exhausted said fund, or attempted
and failed to reach the same. Respondents further
show, that a number of persons, holders and repre-
sentatives of holders of a large amount of Tennes-
see State Bonds, residing in the State of New York,
complainants being of the number, some years 42
prior to the bringing of this and the other suits
aforesaid, formed themselves into an association
having avowedly for its principle, if not its sole
object, the enforcement by concerted action of the
payment of the interest and principal of said bonds
by the State, or at least some compromise and part
payment thereof; that this association was known
as the Committee of Tennessee Bondholders; that
that this committee addressed itself vigorously to
the task of bringing about such a state of public 43
sentiment in said State as would result in a recogni-
tion by the Legislature of said bonds. And in a
provision for the payment of interest on the
same, or some fair adjustment thereof; that
through the public press of the State and Country
was the necessity of such action pointed out by
cogent argument and by fervid appeals to the pa-
triotism and sense of honor of the people of said
State. That as a part of their programme some or
all of the members of said Committee requested 44
that certain eminent gentlemen of New York City
should act as arbitrators to determine what would
be an equitable compromise between the State of
Tennessee and her creditors, who decided that a set-
tlement upon a basis of sixty cents upon the dollar
would be equitable and just to all parties; that this
Committee arrived at the conclusion aforesaid, after

consulting with a Committee of the Tennessee Legislature then in session—said Committee having been appointed at the suggestion of said bondholder, that such conference was desirable for the attainment of the end in view; that said Legislature, however, failed to accede to a settlement upon the terms fixed by said arbitrators and adjourned without doing anything in that direction. That shortly thereafter said Committee of Tennessee bondholders or members thereof, acting for it or with its approval, placed themselves in correspondence with the governor and other prominent officials of said State and urged the desirability of having the Legislature called together in extra session in order to effect a compromise of said State debt. And the said Legislature was thereafter and on the 5th day of December, 1877, called together in extra session to consider of said proposed settlement and compromise, and that propositions were made by complainants and their associates, claiming to be very large holders of Tennessee bonds, to settle said debt and accept new bonds at the rate of sixty cents on the dollar, with the same rate of interest as was borne by the original issue of bonds. That the Legislature was not favorable to an adjustment upon that basis, and that thereupon complainant Stevens, claiming to speak not only for himself but also for others, telegraphed to said Governor, offering to take fifty cents instead of sixty cents as they had proposed, and urging an acceptance of this proposition.

Respondents further show that at the times complainants and their associates were thus engaged in attempts at compromise and settlement with said State, several of the companies to which State aid had been granted under the Internal Improvement Laws aforesaid, had failed to accept the provisions of said act of February 25th, 1869. The

said Mississippi and Tennessee Railroad Company being one, and that complainants or those associated with them in interest and in said association with approbation and consent repeatedly urged the managing officials of said companies to settle with the State as contemplated by said act—and several of them, viz: Geddes & Smith, and E. D. Morgan, being then and before members of said committees of Tennessee Bondholders, and one of them an official of said association, as Respondents are informed, wrote to the Honorable James D. Porter, Governor of said State, on the 23d of February, 1877, informing him among other things that it was believed by some that the debtors of the State were hostile to any settlement of said State debt, which said bondholders were then urging upon the Legislature. And in said communication used the following very significant language:

"But to remove this cause of real or apparent antagonism between the debtors and creditors of the State and also to remove, which is of real and great importance, an obstacle which is calculated to prevent or at least to hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the State be required in a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State, as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash, this to apply to principal and interest. We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the *Creditors* of the State would regard this as a step in the right direction."

53 Respondents aver that the only creditors of the State at that time, or subsequently, with unimportant exceptions, were the holders of her bonds, and that nearly the entire bonded debt then outstanding consisted of bonds issued and loaned to railroad companies under said Internal Improvement laws, and those bonds into which past due interest had been funded as aforesaid, and that the only debtors of the State of any magnitude were those of said companies, which had received, as aforesaid,
54 State bonds, and had failed to pay the State the debt so increased by substitution or otherwise—as they could do—and that it was to these companies alone that reference was made when the debtors of the State are spoken of in the above correspondence.

Respondents are informed, believe and charge that in divers ways, not now necessary to be enumerated in detail, Complainants and other holders of Tennessee State bonds, brought influences to bear upon said companies so receiving State aid, to
55 induce, and even force them, to accept the provisions of said act of February 25th, 1869.

Their reason for this course was obvious. The total bonded debt of the State at or about the time said Act was passed was nearly, if not quite, $40,000,000; and in the then disorganized and impoverished condition of the State, the magnitude and shape of said debt was such as to dishearten the people, it being beyond their present or prospective ability to pay interest on the same, much less pro-
56 vide a fund for its ultimate extinguishment. And to make the situation more discouraging, with perhaps one exception, the said companies to which State bonds had been loaned under the Internal Improvement laws were largely behind in their payments to meet interest on the bonds so loaned, and years in default to the sinking fund, and, besides. were so dilapidated and ruinously out of repair as

to be a positive burden and charge upon the State 57
instead of yielding a profit, when she attempted through receivers under said acts to operate them. The only possible avenue of escape for the State from bankruptcy and consequent ruin to herself and her creditors was some such master stroke of financial policy as was fallen upon by the Legislature of 1869-70, the leading feature of which was to sell outright all railroads hopelessly insolvent and procure a settlement and payment through the aforesaid process of substitution or otherwise, of 58
the sums due the State on account of said loans. By means of this legislation, through sales of the roads of said companies, and substitutions by them as aforesaid, the said State debt was reduced more than $21,000,000, and with prudent management was within the control and ability of said State to pay. As a result State bonds appreciated largely in value and promised golden returns to their holders, who were much pleased at the improved outlook, hailed with satisfaction the settlement by 59
each of said companies when made, and urged into line those companies which seemed to them slow to take advantage of the provisions of said act. Respondents say that in view of the premises and of the matters and things contained in the said answer of the Mississippi & Tennessee Railroad Company, and by them adopted as their answer as before stated.

1st. That complainants and the other holders of 60
bonds loaned said company under said internal improvement laws, never had, by virtue of the terms and provisions of the same or otherwise, any lien, mortgage or claim of any kind or character upon the road or other property of said company; that whilst a lien was reserved upon the same by the acts aforesaid, it was alone for the benefit and security

61 of the State uncoupled with any trust or equity in favor of said bondholders.

2d. Should the Court be of a different opinion, respondents submit that by the express terms of the 12th section of said act of 11th February, 1852, said lien was made defensible, and that the said subsequent legislation and the settlements and payments thereunder, did defeat and destroy the same, and that by reason of the same it has now no longer
62 any existence, nor said bondholders any rights thereunder.

3d. That should this honorable Court be of the opinion that such lien did exist in favor of said bondholders, including complainants, and did remain in full force after said act of 1869-70, unimpaired by any legislative attempt to impair it, and the settlements and payments thereunder, still Respondents submit that by reason of the laches, in-
63 action and acquiescence of complainants and the other said bondholders, they have so slept upon their rights, if they had any, as to make it against equity and good conscience to allow them now to set up, establish and enforce said lien as against the Respondents.

4th. That by reason of the action of complainants and their associates, and of those through whom said bonds were received, in funding their past due coupons and registering their said State
64 bonds under said Funding Acts of 1865 and 1873, and accepting the terms, benefits, securities of said act, they have forever waived, released and surrendered any rights or liens which may have existed in their favor, by virtue of and under said Internal Improvement laws.

5th. That in view of the fact that Complainants and their associates, and those through whom they

claim title, have, as before stated, not only tacitly 65
acquiesced and approved of the legislation aforesaid, wherein the said State asserted her sole right to said lien, and assumed to and did dispose of the same as before said, and have without murmur or warning seen innocent persons, including these respondents, in good faith and upon the assumption of the rights by said State so to act with reference to said lien and the property embraced in the same, part with their money, surrender valuable securities and otherwise incur onerous responsibilities and 66
obligations as aforesaid, to their prejudice as aforesaid but as herein set forth, and otherwise actively encouraged, counseled and constrained said companies, including the said Mississippi and Tennessee Railroad Company to make the aforesaid settlement with the State, and to issue and sell as already stated, said new securities to innocent purchasers for value, they and each of them are equitably estopped and forbidden from now attempting to assert or maintain their suit in this behalf, and 67
should be repelled from a court of conscience.

Respondents, further answering, show that the said Central Trust Company of New York has been advised by respondents of the pendency of this suit and been requested to intervene and have itself made a party, and practice and defend the rights of respondents and those in like interest with them; but it has declined to act in the premises, being advised, as it alleges, that inasmuch as it is a citizen of the State of New York, as are also 68
the complainants herein, it cannot do so; and for that reason these respondents appear in their own names and on their own behalf and in behalf of those in like right with them, as heretofore stated and set forth. And now, having fully answered, these respondents pray that they may be dismissed

69 with their reasonable costs in this behalf most wrongfully sustained.

WRIGHT, FOLKES & WRIGHT,
Solicitors for Respondents.

HENRY T. LEMONS.

Subscribed and sworn to before me this 16th day of July, 1880.

BELL W. ETHERIDGE, Clerk.
W. B. WEISIGER, D. C.

70 Endorsement: No. 318. Equity. Circuit Court of the United States, Western District of Tennessee. C. A. Stevens *v.* Mississippi and Tennessee Railroad Company. Answer of Henry T. Lemon, J. W. Caldwell, G. W. Macrae and C. F. Vance.

Filed July 16th, 1880.

BELL W. ETHERIDGE, Clerk.
W. B. WEISIGER, D. C.

71

72

Exhibit to Answer

**This Indenture,** Made this Thirtieth day of July, in the year of our Lord one thousand eight hundred and seventy-seven (1877), between the *Mississippi and Tennessee Railroad Company*, a corporation organized and existing under and by virtue of the laws of the States of Mississippi and Tennessee, party of the first part, and *The Central Trust Company of New York*, party of the second part, WITNESSETH :

WHEREAS, At a meeting of the Board of Directors of the said Mississippi and Tennessee Railroad Company, duly called and held at Sardis, in the State of Mississippi, on the Nineteenth day of June, 1877, the following preamble and resolutions were adopted :

WHEREAS, In the opinion of this Board it is advisable to issue bonds of this Company to the number of twenty-one hundred, each for the sum of one thousand dollars, and amounting in the aggregate to two million one hundred thousand dollars, for the purpose of enabling the Company to retire and discharge it existing obligations, and also to provide the means required to aid in the construction of a Union Passenger Depot on the river front in the City of Memphis, and to extend its Railroad to said Depot from its present terminus in said city, with a branch or branches from such extension to an Elevator or Elevators on said river front, so that the Company's business may be enlarged and facilitated : therefore,

*Be it Resolved*, That the President or Vice-President of this Company be and he hereby is authorized and directed in the name and on the behalf of this Company, to make, sign, seal and execute, and the Secretary of this Company is also hereby authorized and directed to attest twenty-hundred bonds of this Company, to be numbered consecutively from Number One(No. 1)to Number Twenty-one Hundred (No. 2100), and to be divided into two several classes or series, designated respectively by the letters A and B. The bonds numbered respectively from one to one thousand inclusive, are to constitute the class or series to be known as Series A. Those numbered respectively from one thousand and one to twenty-one hundred inclusive, are to constitute the class or series to be known as Series B. Each bond of the entire issue is to be plainly and distinctly marked with its own

number and with the appropriate letter of the series to which it belongs as aforesaid, and each of said bonds is to be of the denomination of one thousand dollars, those of Series A to be payable on the first day of April, 1902, and those of Series B to be payable on the first day of July, 1902, with interest at the rate of eight per centum per annum, to accrue and become and be due and payable semi-annually, at the office or agency of the Company in the City of New York. The interest on the bonds of Series A shall be payable on the first day of the months of April and October, and that on the bonds of Series B shall be payable on the first day of the months of January and July. Such bonds shall be in the form, and of the tenor and to the effect following, viz :

"*UNITED STATES OF AMERICA.*"

*No.* [——] $1000. *Series* [——]

CONSOLIDATED MORTGAGE BOND.

"The Mississippi and Tennessee Railroad Company acknowledges itself indebted to the bearer in the sum of one thousand dollars ($1000), and promises to pay the same to the bearer at its agency in the City of New York on the first day of April, A. D. 1902, with interest thereon from the first day of April, A. D. 1877, payable semi-annually on the first day of the months of April and October [or, on the first day of July, 1902, with interest thereon from the first day of July, 1877, payable semi-annually on the first day of the months of January and July, as the case may be], in each year, on delivery of the proper coupon therefor, at the said agency in the City of New York, at the rate of eight per cent. per annum, without deduction for any tax or taxes which the Company may, by any present or future laws of the United States, be required to retain therefrom, the said Company hereby agreeing to pay said tax or taxes.

"The holder hereof is entitled to the security to be derived from a mortgage bearing even date herewith (duly recorded) of the Railroad, estates real and personal, and franchises and equities of redemption of the said Company therein mentioned, duly authorized and executed and delivered by the said Company to The Central Trust Company of New York, in trust, to secure the payment of the principal and interest of this and other bonds of like date and amount, amounting in all to the sum of two million one hundred thousand dollars.

[3]

"*In Witness Whereof*, The said Company has caused these presents to be sealed with its corporate seal duly attested at its office in the town of Sardis, in the State of Mississippi, this

day of 1877

*President*

Attest :

*Secretary.*"

And Whereas, It was then further resolved that the payment of the said bonds and the interest thereon (as evidenced by coupons to be thereto attached) should be secured by mortgage of the Railroad and franchises of the Company, and all its estate, real, personal and mixed, and all its property, movable and immovable, of every kind and description and wheresoever situated, owned or to be acquired by it, to be executed and delivered to the party hereto of the second part, as mortgagee in trust, in the form of this present indenture, which was thereupon approved and adopted ; .

And Whereas, It was then further resolved that the President of the party of the first part should be, and he thereupon was authorized and directed, on its behalf to sign, seal, execute and deliver this present indenture of mortgage, affixing thereto its corporate seal, and that its Secretary should duly attest the same, and that the same should thereupon be duly proved or acknowledged and delivered to the said party of the second part, as the act and deed of the said party of the first part, and should be recorded pursuant to the requirements of the laws of the several States in which the lands, property and Railroad of the said party of the first part are situated;

And Whereas, It was then further resolved that eight hundred and seventy-two bonds of the class or series known as Series A, numbered respectively from one (1) to eight hundred and seventy-two (872) inclusive, should be set apart and appropriated to be issued only in exchange of certain outstanding bonds and the funded coupons thereof of the party hereto of the first part, secured by mortgage made by it to G. B. Lamar, A. M. Clayton and F. W. Smith, dated March 7th, 1856, upon the said Railroad and the property hereinbefore mentioned, to the extent in said mortgage set forth, and

which said bonds and funded coupons are herein specified as follows, that is to say :

1. The seven per cent. mortgage bonds of the party of the first part, payable in 1876, amounting to.... $600,000
2. The coupons of said issue of seven per cent. bonds which heretofore matured and were funded in eight per cent. bonds, secured by mortgage dated 26th June, 1866, which coupons were not canceled, but retained their original lien, amounting to..... ..... 272,000

$872,000

and that none of said series numbered as aforesaid shall be used or appropriated for any other purpose whatever ;

And Whereas, It was further resolved that nine hundred and eighty-three bonds of the class or series known as Series B, numbered respectively from one thousand and one to nineteen hundred and eighty-three inclusive, should be set apart and appropriated, to be used only in exchange for certain outstanding bonds of the party hereto of the first part, secured by mortgage upon the said Railroad and property heretofore mentioned to the extent in said mortgage set forth respectively, and which said bonds are here specified as follows, that is to say :

The eight per cent. mortgage bonds of the party of the first part, which mature from 1881 to 1893 inclusive ($100,000 thereof maturing July 1st in each year), secured by mortgage dated 26th June, 1866, to F. W. Smith and A. M. Clayton, the amount of which actually outstanding (not including those issued for coupons of seven per cent. bonds), is $983,000, and that none of said bonds of said Series B, numbered as aforesaid, should be appropriated for any other purpose whatever ;

And Whereas, It was then further resolved that the one hundred and twenty-eight bonds of the class or series known as Series A, numbered respectively from eight hundred and seventy-three to one thousand inclusive, and the one hundred and seventeen bonds of the class or series known as Series B, numbered respectively from nineteen hundred and eighty-four to twenty-one hundred inclusive, should be used only as follows :

(1.) The Company is indebted to the State of Tennessee three hundred thousand dollars for bonds advanced to it by that State, and

which are a lien upon its property by virtue of an Act of the Legislature of Tennessee, entitled "An Act to establish a system of internal improvements in this State," passed February 11th, 1852, and of Acts amendatory thereof, and desires to relieve itself of said indebtedness; upon satisfactory evidence being furnished to the trustee in this mortgage, the party of the second part hereto, that the Company has paid off and discharged any part of its said indebtedness to the State of Tenneessee, and thereafter, as often as said trustee is satisfied the Company has made further payments, said trustee shall certify and deliver to it as many of said bonds of the class or series known as Series A, numbered from eight hundred and seventy-three to one thousand, inclusive, or their proceeds, as shall be equal to the actual outlay required for such payments, so that the amount of said bonds so applied shall not be greater than the amount of debt extinguished; and so from time to time until the said trustee shall be satisfied the whole of said debt to Tennessee has been paid off and discharged. But if the said bonds of the class or series known as Series A, numbered from eight hundred and seventy-three to one thousand, inclusive, or their proceeds, shall be insufficient to pay off the whole of said debt of Tennessee, then in like manner so many of the bonds of the class or series known as Series B, numbered from nineteen hundred and eighty-four to twenty-one hundred, inclusive, or their proceeds, as may be necessary for the purpose, shall be certified, delivered and applied to the payment and discharge of said debt to Tennessee.

(2.) The Company proposes to make large expenditures to aid in the construction of a Union Passenger Depot on the river front in the City of Memphis, and to extend its Railroad to said Depot from its present terminus in said city, with a branch or branches from such extension to an elevator or elevators on said river front, so that the Company's business may be increased and facilitated; upon satisfactory evidence being furnished to said trustee that the Company has incurred expenses in the construction of such work, or any part of it, for said purposes, or for labor, material, right of way, grounds or other thing or service required therefor, and thereafter, as often as said trustee is satisfied that the Company has made further expenditures therefor, or in connection therewith, said trustee shall certify and deliver to it as many of the residue of said bonds of the class or series known as Series B, numbered from nineteen hundred and eighty-four to twenty-one hundred, inclusive, or their proceeds, not required to pay off and discharge said debt to Tennessee, as they shall deem

equivalent to the amount of said expenditures, and so from time to time until said work shall be completed as proposed, and then if any of said last mentioned bonds remain, said trustee shall certify and deliver them to the Company, to be used by it in the maintenance and operation of its road; and any bonds certified and delivered to the Company under the provisions of this indenture shall be sold or otherwise disposed of by the President thereof, at such time and in such manner and upon such terms as he may deem expedient; but none of the bonds of the class or series known as Series A, numbered from eight hundred and seventy-three to one thousand, inclusive, and none of those of the class or series known as Series B, numbered from nineteen hundred and eighty-four to twenty-one hundred, inclusive, shall be certified or delivered by said trustee until after all the other bonds of each series respectively shall have been issued for the bonds for which they are intended to be exchanged;

And Whereas, It was further resolved, that the bonds constituting the said Series A should have priority of payment and of lien, under said mortgage, over the bonds constituting Series B, but that neither nor any of said bonds should have preference or priority of payment or of lien, under said mortgage, over others of the same series;

And Whereas, It was then further resolved that no one of the said bonds should be issued or become secured by this mortgage until there should be indorsed upon it a certificate signed by the party of the second part in the form and to the effect following, viz:

"This bond is one of a series of one thousand bonds known and designated as Series A, numbered from one (1) to one thousand (1000), [or of eleven hundred bonds known and designated as Series B, and numbered from one thousand and one to twenty-one hundred, as the case may be], mentioned in and secured by the consolidated mortgage of the Mississippi and Tennessee Railroad Company, dated

the ..... day of .....
1877, made, executed and delivered by the said Company to the trustee therein named, which said mortgage has been duly recorded.

"Dated New York."

And Whereas, At a meeting of the Stockholders of the said Mississippi and Tennessee Railroad Company, duly held at Sardis, in the State of Mississippi, on the thirtieth day of July, 1877, the Chairman submitted the minutes of the Directors' meeting above recited, whereupon, on motion, duly seconded, it was

"*Resolved*, That the said minutes be approved, and that the resolutions and proceedings therein recited be adopted and ratified, and that the officers of this Company be authorized and directed to carry the same into effect."

All of which, by reference to the minutes of the said meetings, respectively, will fully appear.

NOW THEREFORE THIS INDENTURE WITNESSETH, That the said party of the first part, as well in consideration of the premises, and for the better securing the payment of the said bonds, so to be made and executed for the sum of two million one hundred thousand dollars, ($2,100,000), and the interest which will accrue thereon, and the taxes upon the principal and interest of the said bonds, agreed to be paid by said party of the first part, as therein and herein mentioned, as of the sum of One Dollar lawful money of the United States unto the said party of the first part well and truly paid by the said The Central Trust Company of New York, the party of the second part, at the time of the execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, conveyed, released and confirmed, assigned, transferred and set over, and by these presents, in pursuance and execution of the power and authority in it in anywise vested, and in this behalf enabling, doth grant, bargain, sell, alien, enfeoff, convey, release and confirm, assign, transfer and set over unto the said party hereto of the second part, and to its successors and assigns forever, the Railroad of the party of the first part, to wit: The whole of the said Railroad now located and constructed between its present terminal points in Grenada, in the State of Mississippi, and Memphis, in the State of Tennessee, together with all the real estate of the said Company, wherever the same may be situated; and together with all branches, extensions, sidings and turnouts of the said Railroad now belonging to or which may hereafter be constructed by or acquired by the said party of the first part, and all lands, rights of way, rails, bridges, wharves, fences, workshops, machinery stations, offices, depots, depot grounds, engine houses, buildings, improvements, tenements, and hereditaments now owned by the said party of the first part, and used for the purpose of operating the said Railroad, or which may hereafter be acquired by the said party of the first part and used for the said purpose; together with all the locomotive engines, cars, rolling stock, tools, implements, machinery and materials now belonging or which may hereafter belong to the party of the first part, and now or hereafter in use or intended for use, upon said Railroad or in connection

with the proper construction, equipment and operation of the same ; and also, all and singular the corporate rights, privileges, franchises and equities of redemption of the said party of the first part, acquired or to be acquired, connected with or relating to the said Railroad ; and also, all the streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever and to any of the hereby granted and mentioned premises and estates belonging and appertaining or to belong and appertain, and the reversion and remainders, rents, issues and profits thereof and all the estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the said party of the first part, as well at law as in equity, of, in and to the same, and every part and parcel thereof;—To HAVE AND TO HOLD the same with the appurtenances unto the party hereto of the second part, its successors and assigns forever. BUT IN TRUST, NEVERTHELESS, and to and for the use, benefit and security, as herein mentioned and provided, of the several persons and bodies politic or corporate, their respective successors, executors, administrators and assigns, who shall be or become holders of the said bonds to the amount of two million one hundred thousand dollars ($2,100,000) as aforesaid intended to be hereby secured or any of them, and for the purpose of securing the payment of the said bonds with the interest thereon, and for the uses and purposes, and upon and under the trusts, conditions and covenants herein declared, expressed and contained, but subject to the right of the party of the first part and its successors and assigns to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted or intended so to be, until the said party of the second part is authorized and entitled to enter and take possession of or sell the same, as hereinafter set forth.

And it is hereby expressly covenanted, understood and agreed by and between the parties hereto respectively (the said party of the first part covenanting for itself, its successors and assigns, and the said party of the second part for itself and its successor or successors in the trust hereby created), in manner following, that is to say :

First. That the party of the second part and its successors shall have, hold and retain all and singular the estate, property, premises, rights, privileges and franchises hereinafter mentioned as security for the prompt and punctual payment of the bonds hereinbefore mentioned and described, as provided by the aforesaid resolutions and according to the true intent and meaning thereof. and as

security for the due performance by the party of the first part of each and every covenant and condition herein expressed and contained to be by it kept, observed and performed.

Second. The party of the first part hereby promises, covenants and agrees to and with the party of the second part and its successors, and to and with each and all of the persons who at any time shall be the holders or assignees of any of the bonds, issued under or by virtue of the provisions hereof, that the party of the first part shall and will, from time to time, and at all times, make, execute and deliver to the party of the second part all and every conveyance and assurance for the better and more effectually vesting in and confirming to the party of the second part, its successors and assigns, all and singular, the estate, property and franchises herein and hereby granted or intended so to be, for the uses and trusts herein expressed and contained, which, by the party of the second part, or by its counsel, learned in the law, shall be reasonably devised, advised or required for the purpose of carrying into effect the intention of this indenture.

Third. And the said party of the first part in like manner covenants, promises and agrees, that it will punctually pay to the holders of the bonds aforesaid intended to be hereby secured, the interest thereon semi-annually, as the same shall become due and payable, according to the terms in said bonds contained, and on the days therein respectively mentioned for the payment of the same; and shall and will also, on the days and at the times mentioned in said bonds respectively, or whenever the said principal sums of the said bonds shall, according to the provisions thereof, become due and payable, fully and entirely pay off, satisfy and discharge the whole of the said bonds, principal and interest, without further delay and without deduction from either said principal or interest, for any tax or taxes which the said party of the first part may, by any present or future laws of the United States be required to retain therefrom, the said party of the first part hereby undertaking and agreeing to pay the same, and shall and will also duly and seasonably pay and discharge all the taxes and assessments now imposed or hereafter to be imposed upon the premises hereby conveyed or intended so to be, and upon every part and parcel thereof.

Fourth. Upon the execution and attestation of the said bonds, as authorized and directed by the aforesaid resolutions, the same shall be delivered to the said party hereto of the second part, who shall thereupon certify and issue the same, in the manner and upon the terms and conditions specified in said resolutions, and not other-

wise. No one of the said bonds shall be issued or shall become or be, or be deemed to be secured by this mortgage until so certified, and none of the said bonds, except those numbered from eight hundred and seventy-three to one thousand inclusive, of the class or series known and designated as series A, and those numbered from nineteen hundred and eighty-four to twenty-one hundred inclusive, of the class or series known and designated as Series B, shall be negotiated or issued otherwise than in exchange for or upon cancellation of obligations for which they are intended to be exchanged as above stated, and in such manner that at least one thousand dollars of the obligations to be received in exchange shall be so received (to be held and disposed of as hereinafter provided) for each bond to be issued in exchange until all the obligations to be received in exchange for bonds of each class respectively shall have been exchanged; and one million dollars shall always be the extreme limit of liability for bonds of said Series A, issued in exchange for said obligations and for such of said obligations intended to be exchanged for bonds of series A as shall at any time remain uncanceled and unexchanged, and for the bonds of said Series A, numbered from eight hundred and seventy-three to one thousand inclusive; and eleven hundred thousand dollars ($1,100,000) shall in like manner be the extreme limit of liability for bonds of Series B, issued in exchange for the eight per cent. mortgage bonds of the party of the first part to the amount of nine hundred and eighty-three thousand dollars, secured by mortgage dated the 26th June, 1866, above referred to, and for such of said bonds so secured (not including those issued for seven per cent. coupons as shall at any time remain uncanceled and unexchanged, and for the bonds of said series B, numbered from nineteen hundred and eighty-four to twenty-one hundred inclusive, and such limit shall never be exceeded And it is hereby expressly provided as a part of the condition of this mortgage, and as security for the persons respectively who may become the holders of the bonds secured hereby, according to the priority of lien of the bonds exchanged, that when any of the obligations to be received in exchange therefor shall have been so received by the party of the second part or its successors, the same shall be registered as exchanged, together with the date of the exchange and the number of the new bonds issued in exchange therefor, and they shall be safely kept until all the obligations secured by each of the said mortgages respectively shall have been in like manner received in exchange, or shall have been redeemed or

otherwise paid off and satisfied, when they shall be canceled by the party of the second part and delivered to the party of the first part, and the mortgages securing the same shall thereafter be duly satisfied and discharged of record, but until then the liens thereof shall not be affected, but shall continue in force, and the books of registry and accounts of said exchanges shall be kept open for the examination and inspection of any party in interest at all reasonable times; and when any of the said coupons hereinbefore referred to as funded into eight per cent. bonds shall be exchanged, the bonds into which they were funded shall be surrendered with said coupons.

The bonds of the class or series known and designated as Series A, numbered from eight hundred and seventy-three to one thousand inclusive, and those of the class or series known and designated as Series B, numbered from nineteen hundred and eighty-four to twenty-one hundred inclusive, may be certified, issued and used in the manner and for the purpose specified in the aforesaid resolutions.

Fifth. And it is further mutually covenanted and agreed, that if the party of the first part, its successors or assigns, shall at any time make default or refuse or neglect or omit for any period exceeding sixty days, to pay the semi-annual interest on the bonds intended to be hereby secured, or any of them, or shall make default or refuse, neglect or omit for any period exceeding sixty days, to pay the principal sum of each and all of the said bonds intended to be hereby secured, or any of them, when and as the same shall become due and payable, or shall, after demand made, refuse, neglect or omit, for any period exceeding sixty days, to keep, observe and perform any or either of the other covenants or conditions herein expressed and contained, then and in either such case the said party of the second part or its successors may, in its or their discretion, and shall and will, upon the written request of the holders of not less than one hundred of either series of the said bonds then outstanding, and in person or by agent or agents, attorney or attorneys, enter upon and take possession of all and singular the Railroad, franchises, estates real and personal, and premises hereby mortgaged or agreed or intended so to be, and upon any such default the said party of the first part hereby covenants and agrees to give and surrender to said party of the second part or its successors, or its or their agent or agents, attorney or attorneys, full, peaceable and quiet possession of all and singular the said Railroad and mortgaged premises, and that the said party of the second part and its successors and

its and their agents and attorneys, may, shall and will thereupon have, use, enjoy, operate, manage and control the said Railroad, estates real and personal, and other premises hereby mortgaged, with all the rights, franchises, powers and privileges thereto in anywise appertaining, possession of which may be so taken, and collect and receive all income and profit thereof, and from the same pay and discharge all expenses it may incur in so doing, and any expenses it may deem necessary or proper for the maintenance and protection of the mortgaged premises or for the repairs, replacements and improvements thereof, or to keep up and preserve the same in good order and safe and efficient, and may, shall and will appropriate the net income derived therefrom (after deducting and reserving the expenses of this trust and all payments which may be made for taxes, assessments, charges or liens prior or paramount to the lien of this mortgage, and such sum or sums as may be necessary and sufficient to compensate and indemnify the said party of the second part and its successors in managing the trust, against any liability, loss or damage for and on account of any matter or thing done by it or them in good faith, in pursuance of its or their duty as trustees), to the payment in full without other preference, priority or distinction of one bond over another, than such as is hereinbefore authorized and directed to be given to the bonds of the class or series known as Series A, over those of the class or series known as Series B, first of the interest due on, and secondly, of the principal of all of the aforesaid bonds outstanding and intended to be secured hereby, if the said income and proceeds be sufficient, but if not, then *pro rata*, always respecting and observing the priority hereinbefore awarded to the series of bonds known and designated as Series A; or the said party of the second part or its successors may, shall and will, after or without entering upon or taking such possession, upon the written request of the holders of the like number of the said bonds then outstanding, sell the said premises hereby mortgaged or agreed or intended so to be, including all the estates, franchises, property and rights thereto appertaining, to the highest bidder at public sale in the City of New York (first giving at least three months' notice of the time and place of such sale by publication to be made twice in each week, in two of the daily newspapers published in each of the cities of Memphis and New York), and such sale may be adjourned from time to time, but in such case notice of such adjournment shall in all cases be published in the said newspapers at least twice before the day to which the sale shall be adjourned; and the said party of the second part or its suc-

cessors shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey and transfer to him or them a full, valid and indefeasable title to the said Railroad, franchises, rights and all the property herein in any manner described, freed from all the trusts hereby created, and such deed or deeds shall be a perpetual bar and estoppel to any claim or demand thereto of the party of the first part, its successors and assigns. And the said party of the first part covenants, promises, and agrees to and with the party of the second part, and its successors, and to and with its and their grantees, vendees and assigns, and to and with each of them respectively, that neither the party of the first part nor any person or persons claiming or to claim under any sale or conveyance from it, any part or portion of the premises hereby mortgaged or intended so to be, shall or will ever claim any right, title, interest or equity in and to any part or parcel of the said premises in bar or opposition to or impeachment of the title which may purport to be conveyed or transferred under or by virtue of any such deed or deeds. And the right of redemption existing under the laws of Tennessee is hereby expressly waived by the party of the first part.

It is further covenanted and agreed that the purchaser or purchasers at such sale shall be under no liability to see to the application of the purchase money; but the said party of the second part (after deducting and reserving therefrom all payments made for account of liens prior or paramount to this indenture, and all reasonable and proper charges, expenses, compensation and indemnity), shall and will appropriate such purchase money to the payment as aforesaid—first, of the interest due on, and secondly, of the principal of the said outstanding bonds in full, if said purchase money be sufficient; but if not, then *pro rata*, always respecting and observing the priorities aforesaid; and in the event of any surplus remaining, either of the said trust estate or of the proceeds thereof, after payment in full of the principal and interest of the aforesaid bonds, then the said party of the second part, or its successors, shall reconvey, retransfer and pay over the same to the said party of first part, its successors and assigns, for their sole use and benefit.

And it is hereby expressly understood and agreed that whenever the said party of the second part, or its successors, shall, or shall be entitled to enter upon or take possession of the said mortgaged premises, or any part thereof, as hereinbefore provided, or shall, or shall be entitled to sell the same, or any part thereof, as aforesaid, then and in either such case upon demand of the holders of one

hundred of either series of the bonds outstanding the whole principal sum of each and all of the said bonds then outstanding issued under this indenture, and intended to be thereby secured, shall forthwith become and be due and payable, anything in the said bonds or hereinbefore contained to the contrary notwithstanding.

Sixth. The party of the second part, or its successors, shall have full power and authority, upon the written request of the party of the first part, to exchange for other property, or to sell and convey, by way of release or otherwise, to any person or persons designated by the said party of the first part, all or any part of the aforesaid mortgaged premises other than the said railroad and corporate franchises, which, in the opinion of the party of the first part, may not be necessary for further use in the conduct of its business, free and clear from the incumbrance of these presents, and without liability on the part of the grantee for the disposition made of the purchase money or of the property received in exchange; always provided, and the party hereto of the first part hereby covenants, that the proceeds of any sale so made shall be applied and appropriated either to the improvement of the residue of said mortgaged premises, or to the purchase of other property, real or personal, required for the construction, extension or equipment of the said railroad, or in the purchase of bonds hereby secured, which bonds so purchased shall be forthwith canceled and delivered to the party of the second part: and all property so purchased, as also any that may be acquired in exchange as aforesaid, by the party of the first part, shall be held subject to the trusts of this indenture, and shall be conveyed in mortgage by the party of the first part to the said party of the second part, or its successors, to be so held.

Seventh. Until default shall be made as aforesaid, in some one of the covenants or conditions herein contained, and until the party of the second part, or its successors, shall, or shall be entitled to enter upon and take possession of the above described mortgaged premises, the party of the first part shall be entitled to be and remain in the full possession and use of the said Railroad, and all the premises, properties, franchises, rights and privileges hereinbefore granted; and if the party of the first part shall, and do well, truly and seasonably pay according to the terms, covenants and conditions thereof, the interest and the principal upon each and all of the bonds which are intended to be issued and secured hereby, then this indenture, and all the estate, right, title, claim and demand of the party of the second part in and to the said premises shall thereupon determine,

cease, and be wholly void; and upon proper evidence of the full payment and satisfaction of said bonds, and of the complete fulfillment and performance by the said party of the first part of all and singular the covenants, promises, conditions and provisions herein contained, the party of the second part or its successors, shall make and acknowledge, and cause to be entered upon the records thereof, a proper satisfaction of this indenture.

Eighth. It is hereby further covenanted and agreed, as aforesaid, and this trust is accepted upon the expressed condition that the said party of the second part shall be entitled to just compensation for all services which it may render in the performance of this trust, to be paid by said Company; that it shall be accountable only for integrity and reasonable diligence in the management of said trust, and that it shall not be responsible for the culpable acts or omissions of any agent whom it shall have employed, in the exercise of reasonable discretion, nor shall it be or become liable or responsible for, or by reason of any cause, matter or thing, except for its own willful and intentional breach of the said trust.

Ninth. In case of the resignation or removal, or any disability or incapacity to act of the party of the second part, as such trustee, application may be made by or in behalf of the holders of bonds hereby secured to the aggregate amount of two hundred thousand dollars ($200,000), to any Court of general equitable jurisdiction held in any judicial district in which any part of the aforesaid Railroad is situated, to fill the vacancy thus occasioned, and to appoint a new trustee or trustees; and the trustee or trustees so appointed shall thereupon become and be forthwith vested with the estate hereby granted, and shall have and hold, and be competent to exercise all the powers hereby granted to the party of the second part.

IN WITNESS WHEREOF, the parties hereto respectively have set their common or corporate seals, and have caused these presents to be subscribed by their respective Presidents, and attested by their respective Secretaries, in five separate parts, each of which is identical with all the rest, and each of which is intended to be an original evidence of one and the same contract, on the day and year first above written.

SEALED AND DELIVERED IN
THE PRESENCE OF

IN THE

# Circuit Court of the United States,

1

FOR THE WESTERN DISTRICT OF TENNESSEE.

IN THE SIXTH CIRCUIT,

[In Equity.]

C. A. STEVENS et al.

*vs.*

2

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY et al.

The replication of the complainants to the answer of the defendant, The Mississippi and Tennessee Railroad Company:

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage which may be had or taken to the manifold insufficiencies of said answer, for replication thereto, say that they will aver maintain and prove their bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by these repliants. Without this, that any other matter whatsoever in the said answer contained material or effectual in the law to be re-

3

4

5 plied unto not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, these repliants are and will be ready to aver, maintain and prove as this honorable Court should direct, and humbly pray as in and by their said bill they have already prayed.

L. & E. LEHMAN,
Solicitors for Complainants.

6

7

8

## Stipulation.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the M. & O. R. R. Co.,

*vs.*

THE M. & O. R. R. Co.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MISS & TENN. R. R. Co.

*vs.*

THE MISS. & TENN. R. R. Co.

It is stipulated between the parties to the above-named suits in order to avoid the trouble, expense and delay incident to the taking of depositions and formal proving of Acts of the State of Tennessee, messages of her Governors and other public documents of said State and of the United States, that either party to said suits may use as evidence in these causes printed copies of any and all Acts of

the Legislature of Tennessee, Message of her Governors, Reports of Comptrollers and other public documents of the State and of the United States, subject to objection on account of incompetency or irrelevancy without having the same certified or authenticated, the above parties, however, reserving the right in the event it should be ascertained by a comparison of said acts and other public documents with the originals, that there is any inaccuracy or error in the same, to have the same corrected; provided that each party shall give the other ten days' notice of the particular acts or documents which he desires to use on the trial of said causes. It is also further stipulated and agreed that the defendants in the above-entitled causes, may use as evidence in these causes, printed or written copies of such depositions as have already been taken, or as may hereafter be taken, in any of the causes begun and pending by plaintiff against the other Tennessee railroads in the Federal Courts of East, Middle and West Tennessee or in the Federal Courts at Louisville, Ky.; that printed or written copies of said depositions taken or to be taken may be filed in the above causes by the defendants as their own depositions without having the same formally sworn to by the parties giving said depositions.

It is further stipulated that should the parties desire to do so they may file additional interrogatories addressed to said witnesses whose depositions have been or may be taken in said causes, which shall be considered as a part of said deposition, said additional interrogaties, however, are to be sworn to by the witnesses.

It is further stipulated between the parties hereto that should the defendants desire to take the depositions of other witnesses they are to have full liberty to do so; and it is agreed that such addi-

tional depositions may be taken in the city of New York by giving counsel of complainants reasonable notice of the time and place of taking of the same; or, if the defendants desire to take deposition or depositions of any witness or witnesses living outside of said city of New York they may do so *ex parte*, and without notice to complainants or his counsel, provided that should the party or parties whose deposition defendant's counsel desire to take live in the cities of Memphis, Nashville, or Knoxville, reasonable notice is to be given to the local counsel of the complainants at those points respectively; and in the event such depositions are taken of a witness a copy of same shall within a reasonable time be forwarded to the counsel of complainants in New York, with liberty to said counsel to cross-examine said witness or witnesses should he desire to do so.

E. L. ANDREWS,
*Solr. for Complts.*

WRIGHT, FOLKES & WRIGHT,
*Solrs. for Respondents.*

1

## STIPULATION.

CALVIN AMORY STEVENS, on behalf of the Holders of Tennessee Bonds, issued to the Mobile and Ohio Railroad Company, under Internal Improvement Laws,

*vs.*

THE MOBILE AND OHIO RAILROAD COMPANY and others.

2

CALVIN AMORY STEVENS, on behalf of the Holders of Tennessee Bonds, issued to the Mississippi and Tennessee Railroad Company, under Internal Improvement Laws,

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

3

4 It is hereby stipulated and expressly agreed between the parties to the above-named suits, in order to avoid the trouble and expense and delay necessary to the taking of formal proof, that the following are facts proven in these causes :

5 *First.*—That up to the passage of the Internal Improvement Law of February 11th, 1852, the State of Tennessee had never defaulted upon the principal or interest of her public debt; that in 1852 the taxable property of the State of Tennessee was $177,420,305.$\frac{00}{100}$, and that the debt of said State then amounted to only $3,992,856.$\frac{66}{100}$, and that the rate of State tax was only 11½ cents on the one hundred dollars.

6 The straight bonds of the State of Tennessee were, during the years 1850, 1851, 1852 and 1853, quoted on the New York Stock Exchange as follows:

7

8

Quotations of sales of Tennessee State bonds taken from the official reports of the New York Stock Exchange—

| DATE OF SALE. | | | AMOUNT OF SALE. | PRICE. |
|---|---|---|---|---|
| 1850 | April | 23 | 1,000 6s | 105 |
| " | May | 29 | 1,000 6s | 104 |
| " | July | 15 | 1,000 6s | 104 |
| " | Nov. | 4 | 2,000 6s | 101¼ |
| 1851 | March | 27 | 5,000 6s | 100½ |
| " | April | 3 | 10,000 6s | 100½ |
| " | May | 17 | 2,000 6s | 100½ |
| 1852 | Feb'y | 24 | 1,000 6s | 102 |
| " | April | 9 | 7,000 6s,'90 | 105 |
| " | May | 31 | 2,000 5s | 92 |
| " | June | 17 | 2,000 6s | 110 |
| " | July | 19 | 2,000 5s | 92 |
| " | Dec. | 9 | 5,000 6s,'68 | 106 |
| 1853 | June | | 3,000 6s,'90 | 108 |
| " | July | | 7,000 6s | 105⅝ |

*Second.*—That with the exception of some interest paid in 1867 and 1868, and some paid in 1874 and 1875, the State of Tennessee has paid no interest upon any of its obligations since the commencement of the late war; and the coupons of the bonds of these complainants, up to the first day of January, 1876, and since the beginning of the war, except that paid by the State in 1867–8, and in 1874–5, as previously stated, has nearly all been funded into new bonds of the State of Tennessee under the various funding Acts of said State.

*Third.*—That the prices of Tennessee State bonds at the New York Stock Exchange in each month from April, 1870, to December, 1875, and during the first six months of 187 , were as follows:

1870.

| | New. | Ex. Coup. | Old. | Highest Price. | Lowest Price. | Average Price. |
|---|---|---|---|---|---|---|
| April..... | 2193 | | | 57⅛ | 51 | 542 68673 |
| | | 299 | | 61 | 58 | 579.47909 |
| May..... | 2415 | | | 57¼ | 54¼ | 562.28571 |
| | | 260 | | 70 | 59¾ | 614.53365 |
| June..... | 5865 | | | 65¾ | 57¼ | 612.13162 |
| | | 783 | | 67⅜ | 61¾ | 630.47254 |
| July..... | 3621 | | | 68¼ | 58⅜ | 634.76311 |
| | | 643 | | 70 | 61 | 628.29121 |
| August..... | 860 | | | 62⅜ | 59¾ | 567.43023 |
| | | 312 | | 64 | 60 | 618.42147 |
| September..... | | 196 | | 62¾ | 61¾ | 622.21938 |
| | 633 | | | 61 | 60 | 605.21936 |
| October..... | 331 | | | 61 | 60 | 604.68277 |
| | | | 1 | 62¼ | 62⅛ | 622.50 |
| | | 142 | | 62⅞ | 62¼ | 626.70774 |
| November..... | 529 | | | 60¼ | 55¼ | 580.82884 |
| | | | 150 | 62 | 57 | 604.25 |
| December..... | 1370 | | | 64¾ | 57¼ | 614.08941 |
| | | | 328 | 65 | 69 | 622.51143 |

1871.

| | New. | Old. | Highest Price. | Lowest Price. | Average Price. |
|---|---|---|---|---|---|
| January..... | 1039 | | 64¾ | 61 | 634.45741 |
| | | 542 | 64⅝ | 62¾ | 638.75922 |
| February..... | 360 | | 64¾ | 62¾ | 639.57500 |
| | | 305 | 64⅞ | 64 | 643.40983 |
| March..... | 555 | | 65⅜ | 63⅜ | 642.78378 |
| | | 323 | 65⅜ | 63⅜ | 642.98761 |
| April..... | 582 | | 67⅞ | 65½ | 664.06357 |
| | | 438 | 67⅜ | 65⅜ | 662.82534 |
| May..... | 1385 | | 72⅜ | 67⅛ | 703.12454 |
| | | 761 | 72⅜ | 67¼ | 713.71287 |
| June..... | 972 | | 73 | 70⅛ | 715.75874 |
| | | 344 | 73⅛ | 71 | 718.16133 |
| July..... | 158 | | 72⅜ | 71½ | 718.81329 |
| | | 179 | 72¾ | 71½ | 719.81843 |
| August..... | 371 | | 76⅜ | 73 | 750.55256 |
| | | 234 | 76 | 73 | 748.63782 |
| September..... | 232 | | 75 | 71⅛ | 723.58297 |
| | | 241 | 74⅞ | 71 | 729.83402 |
| October..... | | 357 | 72 | 64¼ | 660.65826 |
| | 799 | | 71¾ | 63½ | 671.89299 |
| November..... | | 272 | 68 | 64 | 659.97702 |
| | 467 | | 68½ | 64 | 654.30942 |
| December..... | | 330 | 67¼ | 61 | 638.54924 |
| | 519 | | 67 | 61¼ | 639.28709 |

1872.

| | Old. | New. | Highest Price. | Lowest Price. | Average Price. |
|---|---|---|---|---|---|
| January | 212 | | 68 | 63½ | 652.77122 |
| | | 373 | 67¾ | 63½ | 653.67962 |
| February | 216 | | 67¼ | 65½ | 668.28472 |
| | | 607 | 67⅞ | 65½ | 652.54736 |
| March | 88 | | 67 | 66 | 666.78840 |
| | | 184 | 67⅛ | 66 | 667.88043 |
| April | 268 | | 70½ | 66¾ | 677.66790 |
| | | 104 | 70¼ | 66¾ | 687.07932 |
| May | 421 | | 73½ | 68¼ | 718.23337 |
| | | 460 | 73½ | 68¼ | 714.25 |
| June | 298 | | 75 | 72 | 737.26929 |
| | | 149 | 75 | 72 | 731.27576 |
| July | 176 | | 75 | 72½ | 733.79261 |
| | | 232 | 75⅛ | 72¾ | 723.16271 |
| August | 155 | | 74½ | 73¼ | 737.91934 |
| | | 320 | 75 | 73¼ | 737.77734 |
| September | 143 | | 74 | 72 | 728.07692 |
| | | 140 | 74⅛ | 71 | 728.08928 |
| October | 223 | | 75⅛ | 72½ | 732.99887 |
| | | 203 | 75½ | 72½ | 731.60714 |
| November | 226 | | 76 | 73 | 739.05973 |
| | | 132 | 76¼ | 73½ | 747.23484 |
| December | 233 | | 82½ | 76 | 794.71861 |
| | | 178 | 83 | 76 | 811.59410 |

1873.

| | Old. | New. | Highest Price. | Lowest Price. | Average Price. |
|---|---|---|---|---|---|
| January | 226 | | 82¼ | 79¼ | 806.58834 |
| | | 244 | 82½ | 79¾ | 807.80737 |
| February | 717 | | 83½ | 79 | 805.36784 |
| | | 735 | 83½ | 78½ | 798.79591 |
| March | 768 | | 86 | 80 | 820.55826 |
| | | 1066 | 87 | 79½ | 819.00680 |
| April | 204 | | 80¾ | 77½ | 797.67769 |
| | | 145 | 80¼ | 78½ | 792.84482 |
| May | 145 | | 82 | 79 | 812.09482 |
| | | 240 | 82 | 78½ | 810.03645 |
| June | 51 | | 81 | 79 | 797.30392 |
| | | 187 | 80½ | 78½ | 792.26604 |
| July | 74 | | 81¾ | 80¼ | 809.40878 |
| | | 174 | 81½ | 79¾ | 810. |
| August | | 101 | 82¼ | 81⅝ | 820.27227 |
| | 30 | | 82½ | 81¾ | 822. |
| September | 23 | | 82⅜ | 72 | 798.48484 |
| | | 100 | 82¼ | 72½ | 803.77500 |
| October | 194 | | 75 | 68 | 707.20360 |
| | | 128 | 74¾ | 69 | 716.72851 |
| November | 48 | | 72¼ | 62 | 665.93750 |
| | | 141 | 72½ | 62 | 698.74113 |
| December | 70 | | 81¼ | 73 | 782.03571 |
| | | 110 | 81 | 71¼ | 780.52272 |

6

1874.

| | | Old. | New Series. | Old Ex. Coupon. | New Ex. Coupon. | New. | Highest Price. | Lowest Price. | Average Price. |
|---|---|---|---|---|---|---|---|---|---|
| 21 | January | 227 | | | | | 81½ | 79 | 800.46211 |
| | | | 20 | | | | 63¾ | 62 | 629.60 |
| | | | | 16 | | | 63½ | 63 | 633.12500 |
| | | | | | 14 | | 63 | 62½ | 630.71428 |
| | | | | | | 38 | 81 | 79½ | 803.98026 |
| | February | 147 | | | | | 91 | 81½ | 867.79061 |
| | | | | | 18 | | 70¾ | 66 | 680.62500 |
| | | | | | | 55 | 91 | 82¼ | 878.81818 |
| | | | | 57 | | | 71¼ | 63½ | 689.94736 |
| 22 | | | 35 | | | | 71½ | 63½ | 684.57142 |
| | March | | 106 | | | | 71½ | 68½ | 700.45990 |
| | | 148 | | | | | 91¾ | 89 | 909.17229 |
| | | | | | 113 | | 71¼ | 69½ | 706.89159 |
| | | | | | | 71 | 91½ | 88¼ | 899.29577 |
| | | | | 137 | | | 72 | 68⅝ | 702.68248 |
| | April | | 118 | | | | 68 | 64¼ | 668.58050 |
| | | | | | | 15 | 88 | 84 | 855.16666 |
| | | 25 | | | | | 88¾ | 84 | 868.10 |
| | | | | 56 | | | 68½ | 64 | 666.98660 |
| | | | | | 52 | | 67¾ | 64 | 644.47011 |
| | May | 66 | | | | | 85 | 82½ | 832.31060 |
| | | | 64 | | | | 65½ | 63 | 639.55007 |
| | | | | 136 | | | 65¼ | 63 | 641.11213 |
| | | | | | 96 | | 64¾ | 61 | 628.42447 |
| | | | | | | 83 | 84¼ | 82¼ | 833.88554 |
| 23 | June | | 126 | | | | 63½ | 61 | 620.46626 |
| | | | | 83 | | | 63½ | 61 | 625.52710 |
| | | | | | | 9 | 80 | 79½ | 795.55555 |
| | | 12 | | | | | 81 | 79 | 804.16666 |
| | | | | | 49 | | 64 | 61 | 617.04081 |
| | July | | 62 | | | | 59⅝ | 53 | 545.48387 |
| | | | | 75 | | | 60½ | 53½ | 570.85 |
| | | | | | 21 | | 60 | 54½ | 571.07142 |
| | | 4 | | | | | 70 | 79 | 790. |
| | | | | | | 2 | 54 | 54 | 540. |
| | August | | | | | 5 | 75½ | 75½ | 735. |
| | | | 57 | | | | 58 | 56 | 573.66228 |
| | | | | | 56 | | 58 | 56 | 576.46875 |
| | | 23 | | | | | 78 | 77 | 777.82608 |
| | | | | 93 | | | 58 | 54½ | 572.21774 |
| 24 | September | | 43 | | | | 57 | 49 | 545. |
| | | | | | 38 | | 57¼ | 50 | 548.78289 |
| | | | | 31 | | | 57½ | 52 | 562.09667 |
| | | 15 | | | | | 77 | 76 | 766. |
| | October | 1 | | | | | 72 | 72 | 720. |
| | | | | 48 | | | 55⅝ | 52 | 535.78125 |
| | | | | | 52 | | 56 | 51 | 547.88461 |
| | | | 43 | | | | 56 | 51 | 544.85465 |
| | November | | | 166 | | | 57⅞ | 55 | 574.05873 |
| | | 12 | | | | | 75⅜ | 74¼ | 748.125 |
| | | | | | | 1 | 57 | 55 | 559.77040 |
| | | | 49 | | | | 70 | 70 | 700. |
| | | | | | 111 | | 57⅛ | 54⅞ | 558.88513 |
| | December | 134 | | | | | 60 | 57 | 583.56243 |
| | | | | | 146 | | 60 | 56½ | 582.85958 |
| | | | | 99 | | | 59 | 57 | 578.59090 |

1875.

| | Old. | New Series. | Old Ex. Coupon. | New Ex. Coupon. | New. | Coupon Ex. | Highest Price. | Lowest Price. | Average Price. | |
|---|---|---|---|---|---|---|---|---|---|---|
| January | | 71 | | | | | 55¼ | 44 | 499.85915 | |
| | | | 137 | | | | 56⅛ | 43 | 513.43978 | |
| | | | | 193 | | | 56 | 47 | 521.26295 | |
| | | | | | 2 | | 78¾ | 78¾ | 787.50 | |
| | | | | | | 15 | 55½ | 55½ | 555. | |
| February | | | | 34 | | | 49½ | 45 | 472.64705 | |
| | | | 60 | | | | 50 | 46 | 482.58333 | |
| | | 30 | | | | | 48 | 45 | 456.70833 | 26 |
| | 1 | | | | | | 67½ | 67½ | 675. | |
| March | | | | | 1 | | 65 | 65 | 650. | |
| | | | | 54 | | | 48¼ | 47 | 477.17592 | |
| | | | 86 | | | | 49 | 47¼ | 479.89825 | |
| | | 84 | | | | | 48 | 46 | 474.22619 | |
| April | | | | | 1 | | 70 | 70 | 700. | |
| | | | | 69 | | | 53⅞ | 49 | 529.74657 | |
| | | | 115 | | | | 55 | 49¾ | 537.16304 | |
| | | 46 | | | | | 53½ | 50 | 517.77173 | |
| May | | | | | 34 | | 71½ | 50 | 507.64705 | |
| | 68 | | | | | | 51¼ | 50⅛ | 509.06250 | |
| | | | | 24 | | | 51 | 49½ | 501.66666 | |
| | | | 44 | | | | 51¾ | 50 | 507.55681 | |
| | | 97 | | | | | 51 | 49½ | 502.83814 | |
| June | | | | | 34 | | 54⅞ | 45¼ | 513.12500 | |
| | 223 | | | | | | 55 | 46 | 505.19618 | 27 |
| | | 94 | | | | | 54⅜ | 45 | 486.59574 | |
| July | 190 | | | | | | 51¼ | 47½ | 500.34868 | |
| | | 22 | | | | | 50 | 47½ | 487.72727 | |
| | | | | | 85 | | 50⅞ | 47½ | 494.41176 | |
| August | | | | | 72 | | 53 | 49⅜ | 510.31250 | |
| | 113 | | | | | | 53½ | 50¼ | 518.86061 | |
| | | 35 | | | | | 52½ | 50 | 504.85714 | |
| | | | | 11 | | | 51 | 50 | 505.11363 | |
| September | 12 | | | | | | 52 | 51½ | 517.29166 | |
| | | 18 | | | | | 51 | 50 | 508.05555 | |
| October | | | | | 49 | | 50 | 46 | 470.25510 | |
| | | 47 | | | | | 47⅜ | 45½ | 463.24468 | |
| | 107 | | | | | | 48½ | 52½ | 501.93925 | |
| November | | 71 | | | | | 46¾ | 45 | 463.75 | |
| | 180 | | | | | | 49 | 45 | 471.00694 | 28 |
| | | | | | 62 | | 47 | 45 | 458.48790 | |
| December | 126 | | | | | | 47 | 40¾ | 431.18055 | |
| | | | | | 129 | | 45 | 38¼ | 422.82945 | |
| | | 91 | | | | | 45 | 38¼ | 409.07967 | |

29 1879.

| | New. | Old. | New Series. | Highest Price. | Lowest Price. | Average Price. |
|---|---|---|---|---|---|---|
| January..... | 4 | | | 29¾ | 26 | 275.93750 |
| | | 12 | | 37 | 36 | 367.08333 |
| | | | 6 | 28 | 26 | 263.33333 |
| February..... | | 19 | | 42 | 36½ | 394.21052 |
| | 20 | | | 28½ | 25 | 271. |
| | | | 30 | 29 | 24¾ | 270.54833 |
| March ..... | | 5 | | 35⅛ | 35 | 350.25 |
| 30 | | | 40 | 28¼ | 25 | 277.43750 |
| | 39 | | | 29½ | 24 | 259.26282 |
| April..... | | 21 | | 39½ | 34 | 361.07142 |
| | 26 | | | 32 | 30 | 304.61538 |
| | | | 6 | 30¾ | 30 | 301.25 |
| May..... | | 68 | | 35½ | 35 | 353.80514 |
| | 3 | | | 33 | 31¾ | 323.33333 |
| | | | 16 | 33 | 30½ | 320.93750 |
| June..... | | 8 | | 35⅛ | 34 | 345.15625 |
| | 24 | | | 32¾ | 31 | 314.27083 |
| | | | 3 | 32 | 30½ | 314.16666 |
| July ..... | | 34 | | 35½ | 33½ | 344.00735 |
| | | | 2 | 32⅝ | 32½ | 325.62500 |
| | 27 | | | 34¼ | 31 | 318.14814 |

31 That said bonds were principally negotiated and sold in New York City, and were either made payable to bearer, using those words, or to blank or order, leaving the blank unfilled, or if filled it was done with some name other than the companies to which they were loaned; that the name of said Mobile and Ohio Railroad Company, nor of the said Mississippi & Tennessee Railroad Company, does not in any way appear either in or upon any of said bonds so loaned them by said State under said In-
32 ternal Improvement laws, and that the same is true as to all of the railroad companies receiving bonds under said Internal Improvement laws.

*Fourth.*—That after the issue of bonds to the various railroad companies under said Internal Improvement laws, there was no difference in the money and stock markets in price between the bonds so

loaned to said railroad companies, and those issued 33
by the State to raise the capital of the Bank of Tennessee or to build her state house; nor was there any difference in price between the bonds loaned to the most valuable railroads and those loaned to the most worthless—except that within the last two years a difference has, in both the above cases, arisen on limited transactions, in open market, in New York—but no difference has ever existed on the New York Stock Exchange.

34

*Fifth.*—That there is nothing upon the books of said Mobile and Ohio Railroad Company or said Mississippi and Tennessee Railroad Company which shows the numbers, dates or series of the bonds so loaned them; said books simply show upon this head that so many bonds aggregating so much money were received by said companies, and the State of Tennessee is credited by that amount, and no record was kept by said companies of said numbers, dates or series, nor have 35
they any knowledge of the same.

*Sixth.*—That the books of the Comptroller of said State show, and the fact is that the said railroad companies in their payments to the sinking fund, paid in any of the bonds of said State or in cash indiscriminately, and that the sinking fund commissioners in their investments of the sinking fund, invested in any of the bonds of the State without regard to the purposes for which they had been issued. 36

*Seventh.*—That the State of Tennessee had loaned and issued her bonds to some of her Internal Improvement Companies—she had endorsed the bonds of some of the other companies, and has issued bonds to build her State House and for other purely State purposes.

*Eighth.*—That the various Acts of the Legislature referred to in the answers of said Mobile and Ohio Railroad Company and said Mississippi and Tennessee Railroad Company were public and notorious, and the various acts and doings of said State officials in respect of these Internal Improvement Acts were as public as their other official acts. That no holder of any Tennessee bond ever objected to or protested against the authority assumed by the State in said acts, nor did any bondholder object to the destruction or cancellation of any of the secureties which said companies had paid into the sinking fund—or to said State's using for its own purposes, money paid into the Treasury of said State to meet the interest accruing on said bonds so loaned said companies—or paid into the sinking fund—which said State did in divers instances do—applying said money so paid to other State uses than paying the interest on her debt. This stipulation is given subject to the weight to be attached to the opinion of Judges Davies and Davis opinion solicited by the then committee of Tennessee bondholders.

*Ninth.*—No holder of any Tennessee bond originally loaned to said companies, nor to any railroad companies receiving aid under Internal Improvement Laws, ever presented coupons of same to said companies nor either of them, and demanded payment of same.

*Tenth.*—As long as the Bank of Tennessee was in operation it was regarded as the fiscal agent of the State of Tennessee. No railroad company receiving State aid under Internal Improvement Laws had at any time any banker or correspondent in New York to pay the interest on the bonds so loaned to it. None of said companies ever retained in its

possession the coupons that had been paid on the 41
bonds loaned to it.

*Eleventh*—That said Mobile & Ohio Railroad Company and said Mississippi & Tennessee Railroad Company have issued the various series of bonds and executed the mortgages and deeds in trust set forth in their respective answers; and that Exhibits 1, 2, 3, 4, 5 and 6, to the answer of said Mobile & Ohio Railroad Company, and Exhibit No. 1, to the answer of said Mississippi and Tennessee Railroad 42
Railroad Company, are true copies of the originals of said documents, and the said originals need not be proved or produced; but said copies may be read in lieu thereof; that the originals of the various mortgages and deeds of trust and bonds made and executed by said companies, or either of them, need not be produced or proved, but printed or written copies of the same may be read in evidence on the hearing of these causes; said copies to have the same force and effect and no more, of such originals and subject to like exceptions for competency 43
or relevancy.

*Twelfth*.—That the Tennessee Substitution bonds issued by said Mobile and Ohio Railroad Company were negotiated and sold to foreigners residing in Europe; that they purchased said bonds in open market, and paid exceeding 90 cents on the dollar in gold for the same, said price included, however, accrued interest for six months; that they purchased in good faith, and honestly believing that 44
said bonds were in all respects regular and valid, and secured as they purported to be on their face, and without notice or knowledge of complainant's claim, and those in like right with him, except in so far as knowledge and notice may be implied by law of the existence of said Act of February 11th, 1852, and the acts amendatory thereof, and except

in so far as the said purchasers of said substitution bonds may be charged by law with notice of the opinion of Davies and Davis of date May 2, 1870, addressed to J. J. Donelson, Chairman of Committee of Tennessee bondholders, a copy of which is herewith filed, marked Exhibit 1, and also except so far as the Comptroller's certificate charges them with notice.

*Thirteenth.*—That the scheme of reorganization and compromise entered into in October, 1876, between said Mobile & Ohio Railroad Company, and Hays, Pierson & Dupuy, Committee, &c., and the creditors of said company, was entered into in good faith by all parties, and in the belief that said substitution bonds were regularly issued, in all respects valid, and secured by the lien which the State had on the property of said company in Tennessee; and in ignorance of any claim on the part of the holders of the Tennessee bonds originally loaned to said company; that they had a prior lien on the same property; except in so far as they may by law be charged with notice, by reason of the existence of said acts, and of the opinion of Davies & Davis aforesaid. But the issues of the new securities under said reorganization had not been made thereunder until after the priority of lien asserted in this suit had been raised in the Mobile and Ohio litigation, and litigated in the Circuit and Supreme Courts of the United States.

E. L. ANDREWS,
*Solicitor for Complainants.*

WRIGHT, FOLKES & WRIGHT,
*Solicitors for Respondents.*

1

## Stipulation.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, &c.,

*vs.*

THE MOBILE AND OHIO RAILROAD COMPANY.

In Equity.

2

CALVIN AMORY STEVENS, &c.,

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY.

3

It is hereby stipulated by and between the parties herein that the annexed is a true copy of the document it purports to be.

WRIGHT, FOLKES & WRIGHT,
*Sol's for Respondent.*
E. L. ANDREWS,
*Sol'r for Complainants.*

4

904



THE

CREDIT AND RESOURCES

OF THE

STATE OF TENNESSEE.

---

The following communication to the New York *Times*, written by the undersigned, is published in pamphlet form at the request of several former citizens of Tennessee now resident in New York. All the statistical facts given are derived from the official reports of the officers of the State.

S. WATSON,
*Agent for the State of Tennessee.*

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TENNESSEE STATE CREDIT AND RESOURCES.

*To the Editor of the New York Times:*

A communication appeared in your paper of the 1st of January, from your correspondent in Nashville, signed "Philo," which does great injustice to the State of Tennessee, and requires some notice from the friends of the State.

The political part of your correspondent's letter I have nothing to do with, excepting so far as it relates to emigration. "Philo" asserts that Northern men are driven away from Tennessee, and that there are not now in Tennessee one-half as many men of Northern birth as there were two years ago. That some Northern men in consequence of their disappointment in their business calculations, and some in consequence of hostility excited by their political course, have left the State may be true, but a very large number remain. They are scattered all over the State, and can be counted by thousands. The

writer of this knows that the rich iron regions below Nashville, lying between the Cumberland and Tennessee River, is rapidly attracting emigration. Substantial men from the North have come there and invested their hundreds of thousands in iron property, and in iron works that have been idle during the war, and are now putting them into operation. It is also known to the writer that Northern emigration is setting in quite rapidly to the counties bordering on the Chattanooga Railroad and its branches. In three counties they have brought in with them the past year capital largely exceeding $200,000. The Nashville press chronicles almost every week the arrival of parties to investigate the advantages and resources of Tennessee; notwithstanding the erroneous impressions of the State spread abroad by the political press and such correspondents as "Philo."

The bitterness of party feeling is very much softtening down in Tennesse. It is true that men who come into the State as blatant politicians, and who expect to live upon politics, do excite the enmity of the political party against which they array themselves; but men who come into the State to cast their destinies with its people by accumulating wealth and developing the resources of the country, are cordially welcomed, everywhere and by everybody.

But the parts of your correspondent's letter which I wish especially to notice are his attacks upon the good faith of the State, and his efforts to ruin its credit by charging upon the State reckless extravagance in aiding railroads, most of which he deems to be worthless.

"Philo" charges that the State refused, upon a technicality, to take the notes of the old State Bank. She refused to take them because she did not consider herself bound in honor and good faith to do so. An attempt was made by some of her citizens to force this depreciated currency upon her for taxes,

904



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But the parts of your correspondent's letter which I wish especially to notice are his attacks upon the good faith of the State, and his efforts to ruin its credit by charging upon the State reckless extravagance in aiding railroads, most of which he deems 12
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"Philo" charges that the State refused, upon a technicality, to take the notes of the old State Bank. She refused to take them because she did not consider herself bound in honor and good faith to do so. An attempt was made by some of her citizens to force this depreciated currency upon her for taxes,

13 but the Supreme Court of the State, composed of men of the highest integrity and ability, unanimously decided that she was under no obligations to do so; and this decision has the sanction of the best legal minds in the State. The Bank of Tennessee is now being wound up. Its debtors can pay their debts in the notes of the bank. The policy of the State is to let as much of the circulation of the bank be redeemed in this way as possible, and after the debts are paid, if any notes remain unredeemed,
14 and if there should be even a moral obligation upon the State to redeem them, it will certainly do so. For in no State is the fidelity to obligations more deeply seated than in Tennessee. This has been proved by her past and will be proved by her future history. The word "repudiation" is an odious one to every Tennesseean. No political press and no demagogue of any political party has ever dared utter it to her people.

But the injurious charge, or insinuation rather, is
15 made by your correspondent, that the State has been guilty of reckless extravagance in aiding worthless railroads. That, in an appropriation of several millions of dollars, some roads should get aid that are not deserving, would of course be expected. But a detailed examination of railroads of Tennessee will show that there are but few if any roads of this character aided.

The Edgefield and Kentucky Railroad runs from Nashville to the Tennessee and Kentucky State line.
16 There it was expected to be united to the Henderson and Nashville Road, which runs from the point of junction through Hopkinsville and Madisonville to Hendersonville and Evansville on the Ohio River. The Kentucky Road, not having been completed before the war, and the Edgefield and Kentucky Road consequently ending in the woods, its interest has never been paid. But the Henderson and Nashville

is now in rapid progress. The road is graded from 17
the State line north to Hopkinsville, a distance of
about 25 miles, and the iron rails probably laid by
this time to that point. Much of the road is also
graded from the Ohio River south, and a good deal
of track laid.

The length of these two roads is 150 miles—fifty
miles in Tennessee and one hundred in Kentucky.
They run through the richest agricultural region in
the West. Seventy-five miles from Nashville they
strike an inexhaustible bed of rich bituminous coal. 18
There are three strata of this coal, one of them a lit-
tle over six feet in thickness, and the road runs just
below the lowest strata. At Evansville these roads
are united to the whole system of railroads in the
great Northwest, and will make almost an air line
communication with Chicago, and it is but a few
miles further to New York by this route than by the
Louisville and Nashville Road. The aid of $300,000
given to the Edgefield and Kentucky Road will se-
cure the immediate completion of the Kentucky end 19
of the road to the coal mines. Thus bringing these
rich mines to Nashville and the whole of Middle and
West Tennessee. Can there be a doubt that the
future coal trade alone over the Edgefield and Ken-
tucky Road will enable it to pay the interest on its
debt to the State ?

The completion of the road referred to will also
greatly benefit the Memphis and Ohio, and the Mem-
phis, Clarksville and Louisville Road. These two
roads together form a line of road running from Mem- 20
phis through Clarksville in the direction of Bowling
Green, Kentucky, and intersecting the Nashville and
Henderson Road at the State line. One of them
passes through the rich iron region lying between
the Cumberland and Tennessee Rivers. The supply
of coal for Memphis, Clarksville, the iron works and
all intermediate points, must go over these roads,

thereby greatly advancing their future paying value. These roads have not heretofore, since the war, paid their interest. But so great is the confidence of the Louisville and Nashville Railroad Company in the future of these roads, that that Company, one of the wealthiest and most ably managed railroad corporations in the United States, has leased the Memphis and Ohio Road for ten years, and is now paying its interest on its debt, and has proposed to buy the Memphis, Clarksville and Louisville Road, offering to pay its floating debt, the back interest due the State, amounting now to $220,272, the whole of its debt to the State, and also to pay the stockholders a portion of their stock. Can any stronger evidence be given of the future paying value of these roads? The payment of their interest hereafter is certainly beyond a doubt.

One of the roads aided by the last act of the Legislature is the Nashville and Northwestern. This runs from Nashville to the Mississippi river, and has its terminus on that river, in the edge of Kentucky. On the opposite side of the Mississippi, it meets the Iron Mountain Railroad, which is being built from St. Louis down the western bank of that river. An appropriation has also been made to enable the Northwestern road to build a short branch, which will connect it with the roads leading to New Orleans and Memphis. The Nashville and Northwestern road has but very recently been completed to the Mississippi, and is unprovided with rolling stock, and of course could not be expected to pay its interest. The recent appropriations of the Legislature will fully equip it and build the branch referred to, and Nashville will then have by this road a very direct communication with St. Louis, the shortest and most direct communication with New Orleans, and almost an air-line route to Memphis. Ought not a road running part

of the way through a rich iron region, running 25
over the fertile soil of West Tennessee, and having such connections, be relied on to pay at least its interest on its debt to the State?

The Nashville and Decatur road is one of the roads aided. It crosses some very winding streams, and has an unusual number of bridges and a large amount of trestle work, all of which needs re-building. It is — miles long, and runs from Nashville to Decatur, Alabama. Means have been provided for its extension to Montgomery in Alabama. This, 26
when completed, will give Nashville almost an air-line communication over this road to Mobile and Pensacola on the Gulf of Mexico. This road has always paid its interest out of its profits, and will be still more certain to do so in the future.

The Nashville and Chattanooga road has always paid its interest and needs no aid. This road has two branches leading off from it—one, called the McMinnville and Manchester, starting about seventy-five miles from Nashville and running north- 27
wardly to McMinnville, thirty-four miles in length; the other, called the Winchester and Alabama road, starting about eighty-five miles from Nashville, running southwardly through Winchester to Fayetteville, thirty-eight miles in length. The rolling stock of these roads was run off, their depots and bridges destroyed, and all the iron rails on both roads removed elsewhere by the United States military authorities. The McMinnville and Manchester road has just been repaired, and the appropriation 28
to the Winchester and Alabama road has been made to enable it to complete its repairs. Both roads were run by the Chattanooga road before the war. The Southwestern road is to be a continuation of the McMinnville and Manchester road, north. The building of this road will be rendered unnecessary by the building of the Nashville and Pacific Railroad.

The Memphis and Little Rock Railroad, although out of the State, is really a Tennessee road, being built principally by Tennessee capital. This road was almost entirely destroyed by the war, and has been wholly unable to pay its interest. But it is being re-built, and contracts have been entered into for its entire completion. Can any intelligent man doubt that a road, running from the capital of the State of Arkansas to the principal commercial city of Tennessee, will pay its interest on its debt to the State when it is re-built?

The Memphis and Charleston Road, although badly crippled by the war, has promptly paid its interest, and so have the Mobile and Ohio, the Mississippi Central and the Mississippi and Tennessee roads.

The East Tennessee and Georgia and the East Tennessee and Virginia roads have always paid their interest promptly, and need no aid.

The Knoxville and Kentucky road has paid its interest. It runs from Knoxville through the rich coal fields of East Tennessee, and it is intended to meet at the Kentucky State line the Lebanon branch of the Louisville and Nashville Railroad. It is already completed thirty-two miles, has fifteen additional miles graded, and is supplied with rolling stock for its local traffic. The appropriation of $800,000 will certainly complete it to the State line. It has already penetrated the coal fields, and is supplying Knoxville with coal, and over this road will be transported the coal to supply Macon and Augusta, and other intermediate points in Georgia. It not only opens up the rich coal fields and iron mines of East Tennessee, but on its completion will give the fertile valleys of that section of the State access to the markets of the country, both North and South. Its coal traffic alone should pay the interest on its debt.

The Knoxville and Charleston road, "Philo" as- 33
serts, owe $615,000 and runs but one mile. This is wholly untrue. This road is nearly completed sixteen miles, and when finished that distance, and equipped, will owe the State only $325,000 in all. This road is to meet a road being built from Charleston, in a direct line to Knoxville.

The Cincinnati and Cumberland Gap Railroad is now running twenty-five miles, with its grading completed twenty miles further, at which point it meets at the North Carolina line a road now build- 34
ing from Asheville. These two latter roads, when completed, will give Knoxville and East Tennessee direct connection with the seaboard in the Southern Atlantic States, and thus render her system of railroads complete, and open up to the world her rich mineral resources, and bring the products of her rich valleys to the nearest and best markets, both North and South.

The Nashville and Pacific Railroad is another road that is to receive the aid of the State. But it 35
can receive no aid until its stockholders grade thirty miles of the road and have it ready for the iron. It then receives State aid to iron it, and upon every additional twenty miles being thus graded it is to receive the State aid to iron the twenty miles. The road is destined to run from Nashville to Knoxville, and will at some day run directly to Bristol on the Virginia and Tennessee State line, there meeting the railroads of Virginia that lead directly to Norfolk. Its completion, and this is rendered 36
certain, and the completion of the short branch of the Nashville and Northwestern Railroad before referred to, will furnish almost an air line of railroad from Norfolk in Virginia through Nashville and Memphis to Little Rock. No one can doubt that this in a few years will be extended to the Pacific, either to the Port of Guayamas, on the Gulf of

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California, or to some point in the State of California. This route will run through the richest agricultural part of the United States, will be free from ice and snow, and the shortest route from the Atlantic to the Pacific. New York will yet see the day when her shortest and best highway to the Pacific Ocean will be through the State of Tennessee, and over her projected Nashville and Pacific road.

We have given the above detailed description of the railroads in Tennessee, with her connections, so that every one may be enabled to judge of the importance of each road, and the perfection of her entire system. It must be obvious that there are very few of her roads, and those very short ones, that are not necessary to the development of her resources. When finished, Knoxville will be the centre of the system in the East, and her roads will connect her with all important points in the Union. Memphis has her system of roads leading to all parts of the Mississippi Valley.

Nashville, the capital of the State, is the centre of the whole system, and her railroads, when completed, will give her close connection with all the cities of the Northwest, and make her the point through which the great highway from the Atlantic to the Pacific must pass. Has not Tennessee shown her wisdom in pledging herself to the support of such a system of roads?

At the close of the war almost all of the roads of Tennessee were nearly in ruins. The State immediately came to their aid, and set them upon their feet again; and finding that additional aid was necessary to fully repair her roads and fully complete her system, she has by the recent act of her Legislature promised additional aid, that may reach the sum of about $4,000,000. But it must be years before this entire sum can be called for, a large por-

tion of this aid being dependent upon the prior 41
grading of the roads by the stockholders. The State has not acted hastily nor rashly in this legislation, but after full investigation of the claims of each road, and careful consideration of the importance of her entire system. The most enlightened of her tax payers believe her action to have been one of wise and judicious liberality, and so we believe those will think who are interested in her securities.

Prior to the war every road in Tennessee, except- 42
ing the Edgefield and Kentucky, and perhaps the Winchester and Alabama roads, paid the interest on the bonds loaned them. The receipts of all the main lines of railroads, and it is believed almost all the roads in Tennessee, are greater now than before the war.

The important question for the bondholder now is: What security have I for the payment of the principal and interest of my bond? The State debt proper is only about $4,000,000. The railroads 43
and all their rolling stock are mortgaged to the State to secure the payment of bonds loaned. This mortgage, as bondholders must know, inures to their benefit. For the payment of $29,000,000 of bonds, which will be the entire amount of bonds issued to the roads, including those that may be issued under the recent act of the Legislature, the bondholders have as security roads which, when completed, will be nearly 2,000 miles in length, and which will have cost and which will be worth fully $70,000,000. In 44
addition to that they have the whole resources of the State solemnly pledged to them. And what are the taxable resources of the State? On the 19th of December last there were due the State for taxes $1,108,900. As all the real and personal estate of the taxpayer is responsible for his taxes, a large proportion of the above amount must certainly be

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paid. The present tax law, under which the taxes of 1868 will be levied, increases the tax fully fifty per cent. The receipts from all sources the past year, exclusive of interest paid by railroads, were $1,517,472. Add fifty per cent. to this will make $2,276,208. To this should also be added what may be collected from back taxes. The expenditures of the State last year, exclusive of interest, were $939,404. Of this amount at least $344,970 were extraordinary expenses, and will not be incurred this year. This would make the State expenditures this year $654,433, which, deducted from her tax receipts, $2,276,208, would leave $1,621,775, a surplus amply sufficient to make up all possible short-comings of railroads in paying their interest, and leaving also a very large amount to be appropriated to the aid of her common schools, a system which she is just inaugurating, combining the best features of the systems of the Northern States.

The pecuniary condition of the State of Tennessee and its resources are but little understood. Outside of East Tennessee, and aside from the destruction of her railroads, and the loss of her slave property, Tennessee was but little injured by the war. The Federal army got possession of Middle and West Tennessee early in 1862. Her citizens were enabled to get rid of all their Confederate currency without a sacrifice. It is true a large amount of her stock of animals were taken by the armies, but the armies, as a general rule, paid for what was taken. The army expenditures were larger in Tennessee than in any other State, and these expenditures enriched its citizens. The city of Nashville certainly came out of the war largely increased in population and greatly advanced in wealth. Everything was bought and sold for cash, consequently no debt was contracted at home or abroad, and as evidence of this we have no stop laws and no serious attempt to pass

any; and we appeal to the merchants of New York as an evidence of the fact, that no merchants of any State pay more promptly than the merchants of Tennessee. Her black labor being formerly owned in small numbers, and many of them working side by side with their masters, labor is much less demoralized than in the more Southern States, as is demonstrated by the abundance of the present crop. Her crop of wheat the last year was fair, and farmers obtained for it from $2 to 2.50 per bushel, a price wholly unprecedented in Tennessee. Her corn crop was a full one, and its surplus is now finding its way over the railways of New York to this city. Her crop of cotton has not been as large for years. Nashville has already received a larger number of bales than the average of entire years prior to this, and she will certainly receive an amount this year more than double her annual receipts before the war. Clarksville, about sixty miles below her on the Cumberland River, was one of the largest interior tobacco markets in the Union before the war; the past year her receipts of tobacco in dollars and cents were greater than they have ever been at any former period.

In addition to her present productive wealth, she has vast resources yet untouched. She has valuable pine timber, larger forests of cedar than any State in the Union. She has scattered all over her every kind of timber used in building or the mechanic arts, except rosewood and mahogany. She has beneath her soil every variety of minerals used in the mechanic arts, and all of it rich in quality and abundant in quantity, and she has a climate and soil capable of producing successfully every article of raw material used in manufacturing.

And yet with all these vast resources, with her sound pecuniary condition, her admirable system of railroads almost completed, and her mercantile and

financial honor untarnished, it is evident from the prices of her bonds, that fears exist that she will falter in paying the interest upon her debt. Why should Tennessee be distrusted? Before the close of the past year she placed her money with her fiscal agent in this city, amply sufficient to pay every dollar of her present January interest.

Did she not, at the close of the war, meet the wishes of her creditors, and fund all her accumulated interest?

With all her business interests disorganized by the war, with her labor in its transition state from slavery to freedom, with her railroads just rising from their ruins, with an imperfect tax system, she has heretofore faithfully met her obligations.

Why should it be feared that she will falter now, when her labor is annually producing a return greater in value than at any former period in her history? When emigration is daily bringing additional labor and capital to her borders. When her railroads are almost rebuilt, aud daily increasing their capacity to pay their dues to the State, and when her future receipts from taxation will annually exceed her ordinary expenses largely over $1,000,000. Surely a knowledge of the condition and resources of Tennessee, the known spirit and character of her people, the well-known unalterable determination of legislators and all her State officials to maintain her public faith inviolate, ought to satisfy every one that the interest on her public debt will ever be promptly paid, and that all her obligations will be honorably and faithfully fulfilled.

S. W.

RAILROADS NOW PAYING AND THAT ALWAYS HAVE PAID THEIR INTEREST. 57

| | Bonds loaned, including interest funded | Bonds endorsed by the State. |
|---|---|---|
| East Tennessee and Virginia | $2,688,100 | $197,000 |
| Memphis and Charleston | 1,643,980 | |
| Nashville and Decatur | 2,115,176 | |
| Nashville and Chattanooga | 395,000 | 1,546,000 |
| East Tennessee and Georgia | 1,690,120 | 126,000 |
| Knoxville and Kentucky | 1,353,200 | 58 |
| Memphis and Ohio | 2,396,110 | |
| Mobile and Ohio | 1,684,800 | |
| Mississippi and Tennessee | 317,800 | |
| Mississippi Central | 1,078,980 | |
| Knoxville and Charleston | 300,000 | |
| | $15,663,266 | |

ROADS NOT NOW PAYING, BUT WHICH WILL CERTAINLY PAY, AND PROBABLY BY THE END OF THE YEAR.

| | | |
|---|---|---|
| Edgfield and Kentucky | $1,070,167 | 59 |
| Memphis, Clarksville and Louisville | 1,894,600 | |
| Nashville and Northwestern | 3,064,850 | |
| | $6,029,617 | |

ROADS NOT NOW PAYING

| | | |
|---|---|---|
| Cincin., Cumb. Gap and Charleston | $985,680 | |
| McMinnville and Manchester | 851,360 | |
| Winchester and Alabama | 1,098,259 | |
| Rogersville and Jefferson | 393,160 | |
| Memphis and Little Rock | 105,000 | 350,000 |
| | $3,433,459 | 60 |

## STIPULATION.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mobile & Ohio Railroad Company,

*vs.*

THE MOBILE & OHIO RAILROAD COMPANY, WILLIAM B. DUNCAN and ANREDW F. ELLIOTT.

No. 319.

In the above-named suit, pending in equity, in the Circuit Court of the United States, for the Western District of Tennessee, at Memphis, the defendant assents to the taking of testimony by the complainants upon oral interrogatories, before William H. DeLancey, notary public, at his office, number 52 Broadway, in the city of New York, and State of New York, commencing on the 13th day of February, 1880, at 12 o'clock noon, and continuing from day to day thereafter until the witnesses produced at said place before said William H. DeLancey, have been fully examined.

And the defendant waive all notice as to the taking of said testimony, and agree that said William H. DeLancey may take the same as if he were an examiner of said Court. It being understood that the defendant shall have the privilege of being present in person, or by their counsel, at said examination and cross-examining the witnesses who may be examined.

Memphis, February 4th, 1880.

WRIGHT, FOLKES & WRIGHT,
*Of Counsel for Defendants.*

5 STIPULATION.

| | |
|---|---|
| CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi & Tennessee Railroad Company. | No. 318. |
| 6 *vs.* | |
| THE MISSISSIPPI & TENNESSEE RAILROAD COMPANY. | |

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Memphis, February 4th, 1880.

WRIGHT, FOLKES & WRIGHT,
*Of Counsel for Defendants.*

QUARTERMASTER GENERAL'S OFFICE,

WASHINGTON, D. C., *28th Sept.*, 1865.

GENERAL ORDERS,
No. 56.

The following order, by the President of the United States, in relation to the relinquishment of the Government's control over all railroads in the State of Tennessee, and their continuations in adjoining States, now occupied by the United States military authorities, and no longer needed for military purposes, is published for the information of all officers and agents of the Quartermaster's Department.

M. C. MEIGS,
*Brevet Major General, U. S. A.,*
*Quartermaster General.*

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WAR DEPARTMENT.

WASHINGTON, *August 8th*, 1865.

MAJOR-GENERAL GEORGE H. THOMAS,
*Commanding Military Division of Tennessee,*
*Nashville, Tennessee.*

GENERAL:

It having been determined by the Government to relinquish control over all railroads in the State of

5 Tennessee, and their continuations in adjoining States, that have been in charge of, and are now occupied by, the United States military authorities, and no longer needed for military purposes, you are hereby authorized and directed to turn over the same to the respective owners thereof, at as early a date as practicable, causing, in all cases of transfer as aforesaid, the following regulations to be observed and carried out :

6 1. Each and every Company will be required to reorganize and elect a Board of Directors, whose loyalty shall be established to your satisfaction.

2. You will cause to be made out in triplicate, by such person or persons as you may indicate, a complete inventory of the rolling stock, tools, and other materials and property on each road.

3. Separate inventories will be, in the same man-
7 ner, made of the rolling stock and other property originally belonging to each of said roads, and that furnished by and belonging to the Government.

4. Each Company will be required to give bonds satisfactory to the Government that they will, in twelve months from the date of transfer as aforesaid, or such other reasonable time as may be agreed upon, pay a fair valuation for the Government property turned over to said Companies, the same being first
8 appraised by competent and disinterested parties at a fair valuation, the United States reserving all Government dues for carrying mails, and other service performed by each Company, until said obligations are paid ; and if, at the maturity of said debt, the amount of Government dues, retained as aforesaid, does not liquidate the same, the balance is to be paid by the Company in money.

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5. Tabular statements will be made of all expenditures by the Government for repairing each road, with a full statement of receipts from private freights passage, and other sources; also a full statement of all transportation performed on Government account giving the number of persons transported, and amount of freight, and the distance carried in each case—all of said reports or tabular statements to be made in triplicate, one each for the Secretary of War, the Military Headquarters of the Department, and the Railroad Company.

6. All railroads in Tennessee will be required to pay all arrearages of interest due on the bonds issued by that State, prior to the date of its pretended secession from the Union, to aid in the construction of said roads, before any dividends are declared or paid to the stockholders thereof.

7. Buildings erected for Government purposes on the line of railroads, and not valuable or useful for the business of said companies, should not form a legitimate charge against such companies; nor should they be charged for rebuilding houses, bridges, or other structures which were destroyed by the Federal army.

8. You are authorized to give any orders to Quartermasters within your Division, which you may deem necessary to carry into execution this order.

By order of the President:

EDWIN M. STANTON,
*Secretary of War.*

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# SUPREME COURT OF THE UNITED STATES.

1

CALVIN AMORY STEVENS & Or.

*vs.*

THE MISSISSIPPI AND TENNESSEE RAILROAD COMPANY & Ors.

2

It is hereby stipulated that the record in this case, upon which the case is to be argued before the Supreme Court of the United States, shall be amended by adding thereto the following documents:

Petition of John T. Terry to be made a co-complainant; order upon same and formal amendments to bill.

3

Order making party defendants.
Answer of H. T. Lemon & Ors.
Replication.
Stipulation as to use of printed copies of State documents as evidence.

Stipulation as to prices of Tennessee bonds.
Stipulation as to letter of S. Watson.
Stipulation as to taking testimony.
Order of President of the United States.

4

Which have been omitted by mistake in the record as heretofore made up and printed, and that upon filing this stipulation the Clerk shall amend the record on file and the printed copies by making such additions thereto, with like effect as if the matters so added had been originally included in the return made from the Circuit Court; this stipulation being made to avoid the necessity of correcting the record by means of *certiorari*.

WRIGHT, FOLKES & WRIGHT,
Sol'rs for Deft's,

E. L. ANDREWS,
Solicitor for Complainants.